Mary C. Aff. Equil Division
Mary J. Brownrigg Court

SUPREME COURT OF THE UNITED STATES.

No. ~~148~~. 77.

MAGIN PUIG, RAMON MIR, AND JUAN BATISTA SOULERE,

vs.

THE SHIP JAMES GUTHRIE, HER TACKLE, ETC., JAMES W. PHILLIPS, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 148.

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vs.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

[SEAL.] I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 24th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth.

KENNETH G. WHITE, *Clerk.*

2 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the eighth day of May, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG, RAMON MIR, and JUAN BATISTA SOULERE, *vs.* THE SHIP JAMES GUTHRIE, her tackle, &c. } Vol. 14, page 62.

JAN'Y 27, 1857.

The libellants file their libel in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel of Magin Puig, Ramon Mir, and Juan Baptista Soulere, of the city of New Orleans, merchants, and doing business as co-partners in the said city, under the name, firm, and style of Puig, Mir & Co., against the ship James Guthrie, belonging to the port of New York, whereof Stephen Chase is now or late was master, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. That the said ship, on or about the 22d day of March, 1856, was lying in the port of Mobile, in the State of Alabama, under
3 the command of the said Stephen Chase, as master, and was then and there being fitted out, under the orders of said Stephen Chase, for a voyage to Cadiz or Ferrol, in the kingdom of Spain. That then and there it was found that it was necessary that she should be furnished with certain provisions, stores, supplies, and other necessaries, in order to render her seaworthy and fit to go to sea on said voyage.

Second. That the said Stephen Chase, master as aforesaid, and also as part owner of said ship, accordingly procured and purchased said provisions, stores, supplies, and other necessaries, and that the expenses of said provisions, stores, supplies, and other necessaries necessarily amounted to about four thousand dollars.

4 That the said master and part owner, not having the funds to pay for said provisions, stores, supplies, and other necessaries, applied to these libellants, at New Orleans aforesaid, for a loan of the amount, or a part thereof, necessary for that purpose, and that these libellants accordingly loaned and advanced to the said Stephen Chase, for the use of the said ship and on her credit and that of her said master and owners, on the said 22d day of March, 1856, the sum of four thousand dollars, payable at the maturity of a certain bill of exchange given to these libellants by the said Stephen Chase for himself and the other owners as a collateral security for the said four thousand dollars.

Third. That the said bill of exchange, so given and received as collateral security as aforesaid, commonly called a disbursement bill, was in three parts, and that the first part was in the words and figures following, to wit:

$4,000. MOBILE, *March 22d*, 1856.

Sixty days after sight of this first of exchange, second and third unpaid, pay to the order of Puig, Mir & Co., four thousand dollars, value received, and charge the same to account of freight of American ship James Guthrie, of Ferrol.

(Signed) STEPHEN CHASE.

To Messrs. ABARZUZA & BROS., *Cadiz.*

5 And that the said firm of Abarzuza & Brothers, of Cadiz, were to attend to the business of the cargo of the said ship in Spain on the voyage aforesaid.

That these libellants, on or about the 27th day of May, 1856, caused the said bill of exchange to be duly presented to said Abarzuza & Brothers, at Cadiz, for their acceptance thereof, but they wholly neglected and refused to accept the same, and thereupon the said bill of exchange was duly protested for non-acceptance thereof, whereof the said Stephen Chase had due notice. That afterwards, when said bill of exchange became due and payable, according to the terms thereof, that is to say, on the 30th day of July, in the year aforesaid, the same being still wholly unaccepted and unpaid, these libellants did cause the said bill of exchange to be presented and shown to the said Abarzuza & Brothers for payment thereof, but they then and there wholly neglected and refused to pay the same, after being requested so to do, and therefore the said bill of exchange was afterwards, on the day and year last aforesaid, at Cadiz aforesaid, duly protested for non-payment thereof, whereof the said Stephen Chase had notice, and that by reason of said non-payment, in addition to the said amount payable by the terms of said bill of exchange, these li-

bellants sustained and suffered damage to the amount of four hundred dollars, being ten per cent. on the amount for which said bill
6 was drawn and made payable; and therefore, on the 27th May, in the year aforesaid, the said sum of four thousand four hundred dollars was due these libellants from the said ship and the master and owners thereof.

Fourth. That the master of said ship and her owners, or either of them, have never yet paid to these libellants said sums of money, or any part thereof, but have hitherto wholly neglected and refused so to do, and the whole of said amount, as aforesaid, is now justly due to these libellants, and said ship is now in the southern district of New York.

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process, in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, and furniture wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree the payment of the amount so due to the libellants, with interest and costs, and that the libellants may have such other and further
7 relief as in law and in justice they may be entitled to receive.

MAGIN PUIG,
RAMON MIR,
JUAN BATISTA SOULERE,
By J. A. MANNING,
Proctor.

J. A. MANNING,
Proctor.
J. BUTLER WRIGHT,
Advocate.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Angus Manning, being duly sworn, deposes and says, that he is proctor for the libellants in the above entitled cause; that the said libellants reside in the city of New Orleans, and that the foregoing libel is true to the best of his knowledge, information, and belief.

JOHN ANGUS MANNING.

A. C. WILLMARTH,
[SEAL.] *Notary Public.*

Endorsed: 14—62. U. S. district court. Magin Puig, Ramon Mir, and Juan Batista Soulere, ag'st the ship James Guthrie, her tackle, &c. Libel. J. A. Manning, proctor.

Filed Jan. 27, 1857.

8 District court of the United States for the southern district of New York.

Filed the 28th day of January, 1857.

Stipulation for libellants' costs entered into pursuant to the rules and practice of the court.

Whereas a libel was filed in this court on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and fifty-seven, by Magin Puig, Ramon Mir, and Juan Batista Soulere, against the ship James Guthrie, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said ship, her tackle, &c., may be condemned and sold to pay the demands of the libellants, and the said libellants and Calvin Durand, sureties, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators, undersigned, shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

MUIG PER & CO.,
By C. DURAND, *Agent.*
C. DURAND.
H. O. BREWER.

Taken and acknowledged this 28th day of January, 1857, before me.
JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Calvin Durand & H. O. Brewer, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the city of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

C. DURAND.
H. O. BREWER.

Sworn to this 28th day of January, 1857, before me.
JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the 28th day of January, 1857.
G. F. B., *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

9 The President of the United States of America to the marshal of the southern district of New York, greeting:

[SEAL.]

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and fifty-seven, by Magin Puig and others, against the ship James Guthrie, her tackle, &c., advances $4,400 and interest for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made and that all persons interested in the said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the seventeenth day of February next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-first.

GEO. F. BETTS, *Clerk.*
J. A. MANNING,
Proctor for Libellants.

10 In obedience to the within motion I attached the ship James Guthrie, &c., therein described, on the 29th day of January, and have not given due notice to all persons claiming the same that this court will, on the 17th day of Feb'y inst., if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to the trial and condemnation thereof, should no claim be interposed for the same.

AB'M T. HILLYER,
U. S. Marshal.

Dated 17th Feb'y, 1857.

Vol. 14, page 62. Southern district of New York, United States district court. Magin Puig *et al. vs.* The ship James Guthrie, her tackle, &c. Monition ret'ble 17th Feb'y, 1857. J. A. Manning, proctor for libellants.

Filed 18th February, 1857.

I hereby depute B. F. Ryer to execute the within process.

Dated January 29, 1857.

AB'M F. HILLYER,
U. S. Marshal.

11 United States district court, southern district of New York.
In admiralty.

THE SHIP JAMES GUTHRIE, JAMES W. PHILLIPS, claimant, *ads.* MAGIN PUIG, RAMON MIR, and JUAN BATISTA SOULERE.

It is stipulated that an order may be made discharging the vessel from arrest upon claimants giving the usual stipulation in eight thousand dollars, and notice is admitted of justification of the stipulators, James W. Phillips and Bell, on sixteenth instant, at one o'clock p. m.

February 15, 1857.

J. ANGUS MANNING,
Proctor for Libellants.

Endorsed: 14, 62. United States district court. The ship James Guthrie, her tackle, &c., *ads.* Magin Puig *et al.* Butler, Evarts, and Southmayed, proctors for claim'ts. Consent to stipulate.

Filed Feb'y 16, 1857.

12 District court of the United States for the southern district of New York.—In admiralty.

Filed the 16th day of Feb'y, 1857.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed on the 28th day of January, in the year of our Lord one thousand eight hundred and fifty-seven, by Magin Puig *et al.* against the ship James Guthrie, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the said ship is in the custody of the marshal under the process issued in pursuance of the prayer of said libel, and by a consent signed by the proctor for the libellants it has been agreed to discharge the said vessel from custody on executing stipulations for costs and value, the latter in the sum of $8,800, as appears from said consent now on file in said court, and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claim'ts or their sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulators undersigned shall at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Butler, Evarts, and Southmayed, esquires, proctors for the claimants of said ship, abide by and pay the money awarded by the final decree rendered by the court or the appellate court if any appeal intervene, then this stipulation to be void; otherwise, to remain in full force and virtue.

JAMES W. PHILLIPS.
WM. BELL.
JAMES C. BELL.

Taken and acknowledged this 16th day of Feb'y, 1857, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner,
And by JAMES C. BELL.

Feb'y 1, 1858.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James W. Phillips, James C. Bell, Wm. Bell, parties to the above stipulation, being duly sworn, each depose and say, that he resides in the southern dist. of New York, and that he is worth the sum of eight thousand eight hundred dollars over and above all his just debts and liabilities.

JAMES W. PHILLIPS.
WM. BELL.
JAMES C. BELL.

Sworn to this 16th day of Feb'y, 1857, before me, and by James C. Bell, Feb'y 1, 1858.

JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the 16th day of February, 1857.

G. F. B., *Clerk.*

13 *Respondent's costs.*

District court of the United States for the southern district of New York.

Filed the 16th day of Feb'y, 1857.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the 28th day of Jan'y, in the year of our Lord one thousand eight hundred and fifty-seven, by Magin Puig *et al.* against the ship James Guthrie, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said ship may be condemned and sold to pay the demands of

the libellants, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claim'ts or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands :

And whereas, also, a filed in said cause by James W. Phillips: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the claim'ts above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

JAMES W. PHILLIPS.
WM. BELL.
JAMES C. BELL.

Taken and acknowledged this 16th day of Feb., 1857, before me.
JOSEPH BRIDGHAM,
U. S. Commissioner,
And by JAMES C. BELL.

Feb. 1, 1858.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James W. Phillips, James C. Bell, and Wm. Bell, parties to the above stipulation, being duly sworn doth depose and say, each, that he resides in the southern district of New York; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JAMES W. PHILLIPS.
WM. BELL.
JAMES C. BELL.

Sworn to this 16th day of Feb'y, 1857, before me.
JOSEPH BRIDGHAM,
U. S. Commissioner,
And by JAMES C. BELL.

Feb. 1, 1858.

Recorded the 16th day of Feb'y, 1857.

G. F. B., *Clerk.*

14 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Monday, the sixteenth day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Samuel R. Betts, district judge.

THE SHIP JAMES GUTHRIE, her tackle, &c.,
asm.
MAGIN PUIG *et al.*

And now James W. Phillips, intervening for the interest of himself and others, appears before the honorable court and makes claim to the said ship, her tackle, &c., as the same are attached by the marshal, under process of this court, at the instance of Magin Puig, *et al.*; and the said James W. Phillips avers that he was in possession of the said vessel, her tackle, &c., at the time of the attachment thereof, and that the person above named is the true and *bona fide* part owner of the said ship, her tackle, &c., and the true and lawful bailee thereof, as part owner; wherefore he prays to defend accordingly.

Sworn to and subscribed this 16th day of February, A. D. 1867, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.
BUTLER, EVARTS and SOUTHMAYED,
Proctors for Claimants.

15 Filed the 16th day of February, 1857.

16 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the 17th day of February, in the year of our Lord one thousand eight hundred and seven.

Present: The honorable Samuel R. Betts, district judge.

THE SHIP JAMES GUTHRIE, JAMES W. PHILLIPS, claim't, *ads.* MAGIN PUIG, RAMON MIR, and JUAN BATISTA SOULERE. } Vol. 14, page 62.

On filing consent to stipulate, and the terms being complied with, on motion of Messrs. Butler, Evarts and Southmayed, proctors for the claimants, it is ordered that the above vessel be discharged from custody, the stipulation for value to represent the vessel.

17 Filed the 17 day of February, 1857.

18 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday, the eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et als.*,
vs.
THE SHIP JAMES GUTHRIE, &c. } Vol. 14, page 62.

The marshal having returned on the monition issued in the above-entitled cause that he had attached the ship James Guthrie, her tackle, &c., and had not given notice,

Messrs. Butler, Evarts and Southmayed appear for James W. Phillips, claimant, and on their motion it is ordered that the claimant have ten days to file and perfect his answer.

On motion of Mr. Manning, proctor for the libellants, it is further ordered that the marshal publish notice in said cause until the 24 day of February instant.

19 Filed the 18 day of Feb'y, 1857.

20 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday, the eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c. } 14, 62.

On reading and filing the mandate of the district judge, and on motion of J. Angus Manning, proctor for the libellants, it is ordered that the notice for all persons to appear and intervene for their interest in the above-entitled cause be published by the marshal until the twenty-fourth day of February inst.

21 Endorsed: Notice not published. Feb'y 24, 1857. Ab'm T. Hillyer, U. S. marshal.

Filed the 24 day of Feb'y, 1857.

22 April 11, 1857.—The claimant and respondent files his answer in the words and figures following, to wit:

United States district court, southern district of New York.—In admiralty.

The claim and answer of James W. Phillips, of the city of New York, merchant, intervening for his interest to the libel of Magin Puig, Ramon Mir, and Juan Batista Soulere, against the ship James Guthrie, her tackle, &c., alleges as follows:

First. The said James W. Phillips claims thirty-one thirty-second parts of the said James Guthrie, her tackle, apparel, and furniture, and states that he is the lawful and bona fide owner of the same.

Second. The said claimant and respondent saith that he is ignorant whether Stephen Chase, master of said ship in the said libel

mentioned, procured or purchased the provisions, supplies, or other necessaries in the second article of said libel mentioned, or whether the cost or expenses thereof amounted to four thousand dollars, or any other amount, and he therefore denies the allegations of said libel in that behalf. He is likewise ignorant that said master had not the funds to pay for said alleged provisions, stores, supplies, and other necessaries, or that he applied to the libellants for a loan of the amount necessary for such purpose, or any part thereof, and he therefore denies those allegations of the said libel; and upon his
23 information and belief the said respondent denies that the libellants lent or advanced to the said Stephen Chase, for the use of the said ship, or on her credit, or that of her master and owners, the sum of four thousand dollars, or any part thereof, or that the libellants received the bill of exchange in the libel mentioned as collateral security for such alleged loan.

Third. The respondent avers that the bill of exchange in the libel set forth was purchased and taken by the libellants upon the personal credit of the drawer thereof, and not upon the credit of the said ship James Guthrie, and that the libellants never had any lien therefor on said vessel, and that after the receipt of said bill of exchange they negotiated and parted with the same, and thereby lost their lien if any they ever had.

Fourth. The respondent is ignorant of the matters alleged in said libel relating to the presentment of said bill for acceptance, the refusal thereof, the protest for non-acceptance, and notice thereof to said Stephen Chase, the presentment of said bill for payment, the protest for non-payment, and notice thereof to said Chase, and he denies those allegations of the libel; and the respondent denies that by reason of the non-payment or protest of said bill the libellants sustained or suffered damage, as in the libel stated, or that at the time in the said libel alleged, or at any time, the sum of four thousand four hundred dollars, or any part thereof, became or was due to the libellants from the said ship or her owners.

Fifth. Upon information and belief, the respondent alleges that at or about the time of negotiating the said bill of exchange to
24 the libellants, the said Stephen Chase, for and on behalf of the owners of said ship, James Guthrie, delivered to the libellants, or to their agent in the premises, as accompanying said bill of exchange, a letter addressed to Abuzgara Brothers, of Cadiz, upon whom said bill was drawn, and to whom said ship James Guthrie was consigned upon the voyage she was then about to make, instructing them to insure the freight of said ship upon such voyage in the amount of four thousand dollars, for the account of the owners of said vessel, so as to cover said draft in case of loss, and that the libellants themselves, or through their agents then and there, and as a part of the transaction upon which said bill was received by them, undertook and agreed to forward said letter of instructions to said Abuzzara & Brothers with all diligence and despatch, but that they negligently delayed the forwarding thereof; that after such delay the said letter was forwarded to and received by said Abuzgara & Brothers, who

accepted the consignment of said vessel to them, and became and were bound to fulfil such instructions; that they wrongfully neglected so to do, and no such insurance was effected, although the same might and ought to have been done, so as that the amount so directed to be insured would have been recoverable for the benefit of the owners of said vessel and to cover said draft. That the said vessel, having on board a cargo of lawful merchandise or freight, sailed on the voyage upon which insurance was so directed, and while pursuing such voyage was wrecked, and the said voyage was thereby necessarily broken up, and the said freight became a total loss, and that the owners of said vessel, on whose behalf such insurance had been ordered as aforesaid, were interested in said freight until and at the time of such loss to an amount exceeding the sum for which insurance was so ordered; that by means of the said neglect of the libellants and their agents to forward in due season the said letter of instructions, and by reason of the aforesaid neglect of said Abuzzara & Brothers after receipt of such letter to effect such insurance, the libellants and the said Abuzzara & Brothers, respectively, became bound and liable to pay to said Stephen Chase and his co-owners of said ship the damages by them sustained by reason of the failure to effect the said insurance, which damages amounted to four thousand dollars; that being under such liability, and having thus a fund in hand, or with which they were chargeable, sufficient to pay the said bill and applicable thereto, the said Abuzzara & Brothers paid and satisfied the said bill of exchange, and the said bill became extinguished by such application of the amount of their said liability; that if the libellants are now the holders of said bill, they acquired the same subsequent to its maturity, and after it had been paid and extinguished as aforesaid.

25

Sixth. This respondent is ignorant of the matters set forth in the fourth article of the libel, save that the said ship, at the time of the filing thereof, was in the southern district of New York, and he therefore denies the same.

26

Seventh. That this claimant and respondent acquired the said thirty-one thirty-seconds of said ship by bona fide transfer from the former owners for a valuable consideration, made as to twenty thirty-seconds thereof, on or about the sixteenth day of August, 1856, and as to the remaining eleven thirty-seconds thereof, on or about the 26th day of September, 1856, and that he so acquired the same, and parted with the consideration therefor without knowledge or notice of the claim now made by the libellants; that if the libellants had any lien on said vessel for their said claim, they had sufficient opportunities for the assertion and enforcement thereof, and ought to have asserted and enforced the same before the said transfer to this claimant and respondent, but that they suffered such transfer to be made without making known their said claim, and that by reason of their laches and default in the premises they have lost such lien, if any they had; and likewise, that the libellants have elected to waive such lien by commencing a suit at common law against the former owners of

said ship to recover the amount of said bill of exchange, with the damages thereon.

Whereupon this claimant and respondent prays that the said libel may be dismissed with costs.

JAMES W. PHILLIPS.

27 Sworn to before me this 9th day of April, 1857.

GEO. W. MORELL,
U. S. Comm'r, South Dist., New York.

BUTLER, EVARTS & SOUTHMAYED,
Proctors for Claimant and Respondent.
CHS. F. SOUTHMAYED, *Advocate.*

Endorsed: 14, 62. United States district court, southern district of New York. The ship James Guthrie, James W. Phillips, claimant, *ads.* Magin Puig and others. Answer. Butler, Evarts & Southmayed, proctors.

Filed April 11, 1857.

28 To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The replication of Magin Puig, Ramon Mir, and Juan Batista Soulere, libellants, to the claim and answer of James W. Phillips, claimant and respondent, alleges that they will aver, maintain, and prove their libel to be true, certain, and sufficient, and that the said claim and answer of the said claimant and respondent is uncertain, untrue, and insufficient; and they humbly pray, as in and by their said libel they have already prayed.

J. A. MANNING,
Proctor for Libellants.

Endorsed: 14, 62. United States district court, southern district of New York. Magin Puig and others *agst.* The ship James Guthrie, &c., James W. Phillips, claimant, &c. Replication. J. A. Manning, proctor for libellants.

Filed May 1, 1857.

29

30 U. S. district court, southern district of New York.—In admiralty.

MAGIN PUIG *et al.*
vs.
THE SHIP JAMES GUTHRIE, &C., JAMES W. PHILLIPS, claimant. } 14, 62.

We hereby consent that an order be made in this cause directing a commission to be issued to Walter H. Peters, esquire, of the city of New Orleans, in the State of Louisiana, as commissioner therein,

to take the testimony on behalf of the libellants of F. de F. Martin and J. Grau, both of the city and State aforesaid, upon interrogatories and cross-interrogatories to be thereunto annexed.

BUTLER, EVARTS & SOUTHMAYED,
Proctors, &c.

Dated New York, July 31, 1857.

Endorsed: 14, 62. U. S. district court, southern district of New York. Magin Puig *et al.* vs. The ship James Guthrie, &c. Consent for order to issue commission to New Orleans. J. A. Manning, proctor for libellants.

Filed 13th August, 1857.

31 U. S. district court, southern district of New York.—In admiralty.

MAGIN PUIG *et al.*
vs.
THE SHIP JAMES GUTHRIE, &c., JAMES W. PHILLIPS, claimant. } 14, 62.

We hereby consent that an order be made in this cause directing a commission to be issued to Richard B. Owen and Louis Lude, esquires, of the city of Mobile, in the State of Alabama, or either of them, as commissioners or commissioner therein, to take the testimony on behalf of the libellants upon interrogatories and cross-interrogatories to be thereunto annexed, of the following named witnesses, to wit: Joseph E. Murrell, William Sedley Johnson, John W. Murrell, and Alfonse Perez, all of the city and State aforesaid.

Dated New York, July 31, 1857.

BUTLER, EVARTS & SOUTHMAYED,
Proctors, &c.

Endorsed: 14, 62. U. S. district court, southern district of New York. Magin Puig *et al.* vs. The ship James Guthrie, &c. Consent for order to issue commission to Mobile, Ala. J. A. Manning, pro'r for libellants.

Filed 13 Aug't, 1857.

32 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the thirteenth day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Charles A. Ingersoll, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c.; JAMES W. PHILLIPS, claimant. } Vol. 14, page 62.

On filing a consent, signed by the proctors for the claimants, and on motion of J. A. Manning, proctor for the libellants, it is ordered

that a commission be issued to Walter H. Peters, esq., of the city of New Orleans, in the State of Louisiana, as commissioner therein, to take the testimony in behalf of the libellants of F. de F. Martin and J. Graw, both of the city and State aforesaid, upon interrogatories and cross-interrogatories to be thereunto annexed.

33 Filed the 13th day of August, 1857.

34 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the 13th day of August, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Charles A. Ingersoll, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, &c.;
JAMES W. PHILLIPS, claimant.
} Vol. 14, page 62.

On filing consent, signed by the proctors for the claimant, and on motion of J. A. Manning, esq., proctor for the libellants, it is ordered that a commission be issued to Richard B. Owen and Louis Lude, esquires, of the city of Mobile, in the State of Alabama, or either of them, as commissioners or commissioner therein, to take the testimony on behalf of the libellants upon interrogatories and cross-interrogatories to be thereunto annexed of the following named witnesses, to wit: Joseph E. Murrell, William Sedley Johnson, John W. Murrell, and Alfonso Perez, all of the city and State aforesaid.

35 Filed the 13th day of August, 1857.

36 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Monday, the ninth day of November, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, &c.
} Vol. 14, page 62.

The clerk having this day received, by mail, the depositions taken under the commission issued in the above cause to R. B. Owen, esquire, commissioner at Mobile, on the part and behalf of the libellants, ordered that the same be opened and filed.

37 Filed the 9th day of Nov'r, 1857.

38 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Thursday, the first day of Oc.

tober, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, &c. } Vol. 14, page 62.

The clerk having received this day, by mail, the depositions taken under the commission issued in this cause, ordered that they be opened and filed.

39 Filed the first day of October, 1857.

40 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday, the 16th day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, &c. } Vol. 14, page 62.

The clerk having this day received by mail the depositions taken before R. B. Owen, on the part of the libellants, under and by virtue of a commission issued out of this court to Mobile.

Ordered that the same be opened and filed.

41 Filed the 16th day of March, 1859.

42 U. S. district court, southern district of New York.—In admiralty.

MAGIN PUIG *et al.*
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c.; JAMES W. PHILLIPS, claimant.

We hereby consent that an order be made in this cause, directing a second commission to be issued to Richard B. Owen, Peter Hamilton, and Louis Lude, esquires, of the city of Mobile, in the State of Alabama, or to said Peter Hamilton, and either of the other two, as commissioners therein, to take the testimony and further testimony on behalf of the libellants, upon interrogatories to be thereunto annexed of the following named witnesses, to wit: Charles Walsh, Newton St. John, Charles D. Dickey, Henry V. H. Voories, David Wheeler, William Denver, George S. Wilson; and the following named, heretofore examined under former commission, to wit: John W. Murrell, Joseph E. Murrell, A. Peres, and William Sedley Johnson, all of the city and State aforesaid.

Dated New York, Jan'y 13, 1859.

BUTLER, EVARTS & SOUTHMAYED,
Proctors for Claimant.

J. ANGUS MANNING,
Proctor for Libellants.

43 Endorsed: U. S. district court, S. D. of New York.—In admiralty. 14, 62. Magin Puig and others *vs.* The ship James Guthrie, her tackle, &c.; and James W. Phillips, claimant. Consent for order to second commission to take testimony. J. A. Manning, proctor for libellants.

Filed Jan'y 15, 1859.

44 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Saturday the fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c. } Vol. 14, page 62.

On filing a consent signed by the proctors for the libellants and claimant, and on motion of J. Angus Manning, esquire, proctor for said libellants, it is ordered that a second commission issue in the above-entitled cause, directed to Richard B. Owen, Peter Hamilton, and Louis, esq., of the city of Mobile, in the State of Alabama, or to said Peter Hamilton, and either of the other two, as commissioners therein to take the testimony, and further testimony on behalf of the libellants, upon interrogatories and cross-interrogatories to be thereunto annexed, of the following named witnesses, to wit: Charles Walsh, Newton St. John, Charles D. Dickey, Henry V. H. Voories, David Wheeler, William Denvir, George S. Wilson, and the following named heretofore examined under former commission, to wit:
John W. Murrell, Joseph E. Murrell, A. Peres, and William
45 Sedley Johnson, all of the city and State aforesaid, and that said commission, when executed, be returned (directed to the clerk of this court) by mail, or the usual mode of transmitting letters from the city of Mobile to New York.

Filed the fifteenth day of January, 1859.

46 United States district court, southern district of New York. —In admiralty.

MAGIN PUIG and others
vs.
THE SHIP JAMES GUTHRIE, &c., JAMES W. PHILLIPS, claimant.

It is stipulated that the order for commission be modified so as that it may be executed by the persons named therein as commissioners, or any one of them, provided that Peter Hamilton, named as commissioner, on behalf of the claimant, shall have reasonable notice (say three days) of the time and place of execution of the

commission, and have liberty to attend if he choose. If Mr. Hamilton be absent from Mobile, the notice may be left at his office.

BUTLER, EVARTS, & SOUTHMAYED,
Claimant's Proctors.

Jan'y 17, 1859.

Endorsed: 14, 62. U. S. district court, southern district of New York.—In admiralty. Magin Puig *et al.* vs. The ship James Guthrie, &c. James W. Phillips, claimant. Consent of Butler,
47 Everts, and Southmayed, proctors of claimant, to modify order for second commission. J. A. Manning, proctor for libellants.
Filed Jan'y 19, 1859.

48 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday the nineteenth day of January, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable R. Betts, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, &c. } Vol. 14, page 62.

On filing consent, signed by the proctors for the claimant, and on motion of the proctor for the libellants, it is ordered that the order for commission entered on the fifteenth instant be modified so as that it may be executed by the persons named therein as commissioners, or any one of them, provided that Peter Hamilton, named as commissioner, on behalf of the claimant, shall have reasonable notice (say three days) of the time and place of execution of the commission, and have liberty to attend of he choose; and if Mr. Hamilton be absent from Mobile, the notice may be left at his office.

49 Filed the nineteenth day of January, 1859.

50 U. S. district court, southern district of New York.

MAGIN PUIG and others
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c., JAMES W. PHILLIPS, claimant.

GENT.: This cause will be brought on for hearing at the next term of this court to be held at the U. S. court-rooms, Chambers street, New York city, on the first Tuesday of November next.

Dated N. Y., Oct. 27th, 1859.

Yours, &c.,

J. ANGUS MANNING,
Proctor for Libellants.

BUTLER, EVARTS, & SOUTHMAYED, Esq's,
Proctors for Claimant Phillips.

Endorsed: 14, 62. U. S. district court, southern district of New York. Magin Puig *et als.* vs. The ship James Guthrie, her tackle, &c. James W. Phillips, claimant. Default and ref'ce. Admitted due service of a notice of which the within is a copy. N. Y., Oct. 27, 1859. Butler, Evarts, and Southmayed, proctors for claimant.

Filed Nov. 7, 1859.

51 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Monday the seventh day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c., JAMES W. PHILLIPS, claimant. } 14, 62.

This cause being called in its order on the calendar, Mr. Manning reads and files notice of hearing and admission of service, and moves the hearing of the cause.

The proctors for the claimant not appearing, on like motion of Mr. Manning, proctor for the libellants, it is ordered that the default of the claimant in not appearing be, and the same is hereby, entered.

And, on like motion, it is further ordered that it be referred to a commissioner of this court to ascertain and compute the amount due the libellant for supplies, and to report thereon to this court with all convenient speed.

52 Filed the seventh day of November, 1859.

53 U. S. district court.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, &c., and JAMES W. PHILLIPS. }

It is stipulated in the above-entitled action on the part of the libellants, that the order which was taken therein against the respondent by default on the 7th day of November, 1859, may be opened upon the payment of clerk's fees on entering and opening default by respondent, and the cause restored to the calendar, and that a rule to the above effect be entered.

Dated New York, 9th November, 1859.

J. ANGUS MANNING,
Proctor for Libellants.

Endorsed: 14, 62. U. S. district court. Magin Puig *et als.* vs. ship James Guthrie, &c. Consent to open default. J. A. Manning, proctor for libellants.

Filed November 23, 1859.

54 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday the 23d day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: Honorable Samuel R. Betts, district judge.

THE SHIP JAMES GUTHRIE, &c., and JAMES W. PHILLIPS, cl'm't, *ads.* MAGIN PUIG *et al.* } Vol. 14, page 62.

On filing a consent, signed by the proctor of the libellants, and on motion of Evarts and Southmayed, proctors for claimant and respondents, it is ordered that the order taken against the respondent by default on the 7th day of November, 1859, be, and the same is hereby, opened, and the cause restored to the calendar.

55 Filed the 23d day of Nov'r, 1859.

56 U. S. district court.

MAGIN PUIG *et al.* *vs.* THE SHIP JAMES GUTHRIE, her tackle, &c. } J. A. Manning. Supplies. Butler, Evarts & Southmayed.

Dec'r 19, 1859.—Pleadings read. Evidence for libellants. Deposition of Joseph E. Murrell read. Protest. Evidence for the claimants.

Henry Cammerden, jr., sworn:

I was in September, 1856, a custom-house broker and notary public, 25 Pine st. Habitually at custom-house. (Bill of sale Sept. 20th, '56, produced;) that is my signature as witness to bill; paper, I think, was executed in my presence.

Cross-ex'd.—I do not recollect particularly about this. It is my signature. I cannot recollect this transaction particularly. My habit is to see paper signed. I don't think I would witness a paper not signed in my presence. If there are several who sign, I should witness it as to the particular name. I know nothing of the consideration of this instrument.

Evidence for the libellants.

Depositions of John W. Murrell, W. Sedley Johnson, Furnald F. Martin, Juan Graw, George S. Wilson, Charles D. Dickey, and Joseph E. Murrell read, subject to objections.

57 December 20, 1859.—Cause continued.

For libel'ts:

Charter-party ..... Read.
Letter from Murrell ..... "
Additional agreement in charter-party ..... "

Letter from Capt. Chase to Murrell.....Read.
Depositions of George W. Boyd, jr..... "
" " Charles J. Dickey ..... "
Daniel Wheeler..... "
Charles Walsh ..... "
Henry D. H. Voorhies..... "
W. Sedley Johnson..... "

J. Angus Manning sworn—proctor in cause:

Received papers from parties at south. The papers now produced are all that I have received, excepting those connected with the commission and the protest.

Calvin Durand sworn:

I reside in New York. In 1856, gen'l merchant at that time in New York. I had correspondence at that time with Puig, Mir & Co., at New Orleans. I received from them letter (produced) marked "A," Sept. 24, 1856; (letter read.) I think I went immediately to Mr. Phillips, acting agent for the ship. On the 24th or 25th, I think, some letters referred to in letter A arrived next day. I called on Phillips; saw Mr. Phillips. He thought he had nothing to do with it, and thought I should call on Page and Allen; said he could
58 do nothing without seeing them, tho' he admitted he was interested in ship. I understood from him he had $10.000 in ship. I have seen ship; considered superior ship; valued from $35,000 to $40,000; a new ship. Phillips did not say he would not pay it, but wished to hear from Page and Allen. I know Capt. Chase; have seen him in New York, since Sept., 1856. In March, 1857, I had conversation of alleged cause of action here.

Cross-examined.—I have had frequent letters from Puig & Co. Next day I received letters from Murrell. Phillips did not tell me what time he acquired his interest. I inferred, from conversation, he was interested $10,000. The ship in September, 1856, had cleared for the colonies. She had cleared on the 22d Aug't, for St. John; thence to England. She arrived in New York on 22d July, and was here from that time. I suppose she came here from Key West, where she had been partially repaired from damages at Tortugas shoals; came here for full repairs. I saw a general average paper, showing expenses at Key West, somewhere about 9 or $10,000. I inferred his interest to be $10,000, from conversation. He spoke of his heavy expenses at Key West. I inferred it from these expenses; not entirely from them. I supposed him to be a part owner. I can't say from what I inferred that he owned $10,000; from general conversation; from his having her under his charge, being part owner of the vessel. He said he had expended money on her—some $10,000; the exact words I don't recollect. My impression was that he had bought a part of the ship and paid these expenses at Key West.

59 Re-direct.—I don't know when Puig, Mir & Co. received the original protested bill. By vessel, from Cadiz to New Orleans, is 40 to 60 days to get a letter. A letter dated 31st July

would arrive in from 40 to 60 days. If it came by England, it would be 32 days. Mail, that way, frequent; 3 or 4 times a month.

Captain's protest read. Evidence for the claimants. Bill of sale from Page and Allen to Phillips, read, together with record. Bill of sale from same to same, dated Aug. 7, 1856. Letters from Puig, Mir & Co., to Page and Allen, and from Capt. Chase to Puig, Mir & Co.

Testimony closed. Decisions No. 25, p. 203.

60 *Protest of bill.—Evidence for libellants.*

Number three hundred and forty-one.

In the city of Cadiz, on the thirty-first of July, of the year eighteen hundred and fifty-six, before me, notary public, and the undersigned witnesses, appeared Don Cipriano Lopez Martinez, resident of the said city, who is known by me, and required me to protest, for default of payment, a bill of exchange, of which he held the first and second, drawn in Mobile, whose translation, in Spanish, is as follows:

Exchange for $4,000. Mobile, twenty-second of March, eighteen hundred and fifty-six.

Sixty days after sight of this first of exchange, (second nor third unpaid,) pay to the order of Messrs. Puig, Mir & Co. four thousand dollars, value received, which carry to debit of freight account of the American vessel James Guthrie, bound for the Ferrol.

STEPHEN CHASE.

To Messrs. ABARZUZA BROTHERS, *Cadiz.*

And endorsed:

Pay to the order of Messrs Cahuzac Brothers, New Orleans, twenty-sixth of March, eighteen hundred and fifty-six.

PRUIG, MIER & CO.

And further endorsed:

Pay to the order of Don Capriano Lopez Martinez, value received of Don Gabriel Lopez Martinez, Havana, March thirty-first, eighteen hundred and fifty-six. Cahuzac Brothers. And thus accepted,
61 we accept under protest, to honor the signature of Pruig, Mier & Co., first endorsers. Cadiz, May thirty-first, eighteen hundred and fifty-six.

ABARZUZA BROTHERS.

With which bill of exchange I, the notary public aforesaid, this day, at eleven o'clock a. m., requested Don José Abarzaza, of this city, partner in the mercantile firm called Abarzaza Brothers, to pay said amount, it being due; to which he answered, that said bill of exchange had been presented to him yesterday for payment, and that he declined paying it for the reason stated in the protest for non-acceptance. I then duly protested said bill of exchange for non-payment, declaring that the costs and damages arising from said non-payment would be charged to his firm, as well as to all others

concerned in said bill of exchange, and signed it in due form, there being present and witnesses Don Francisco Espinoza de los Monteros and Don José Perez, both residents of Cadiz.

ABARZUZA BROTHERS.
JOAQUIN RUBIO.

After which said Don José Abarzuza declared, that to meet the obligation incurred by his house, by their acceptance of said bill of exchange, he was ready to pay, for honor and account of Messrs. Puig, Mier & Co., and accordingly, in my presence, paid the amount of said bill of exchange and costs incurred, in gold and silver currency, of which, after counting, possession was taken by Don Cipriano Lopez Martinez, who in consequence gave, and hereby gives, receipt for said amount and costs paid to him by said Abarzuza Brothers, and constitutes them in his stead and place, empowering
62 them to collect said amount and costs from all, each and every endorser or endorsers of said bill of exchange, as well as the drawer thereof, and all others therein concerned, and sue the same if needful, until full payment be obtained. All which is signed by the witnesses present at the transaction, Don Francisco Espinosa de los Monteros and Don José Perez, both residents of this city,

CIPRIANO LOPEZ MARTINEZ.
ABARZUZA BROTHERS.
JOAQUIN RUBIO.

The above is a true and faithful copy of the original, which, duly stamped and certified, remains in my register. The present copy I deliver at the request of Messrs. Abarzuza Brothers, duly stamped and certified.

JOAQUIN RUBIO.

Cost, 124 rials.

The undersigned, notaries, certify, that Don Joaquin Rubio, who certifies the above copy, is honorary notary of the court of Seville, and notary public in this city, and deserves all trust and confidence.

SERVAND ACASO.
FRANCISCO DE PAULA RIVERA Y LOZANO.
BARTOLMÈ RIVERA.

[SEAL.]

Endorsed: United States district court, S. D., N. Y. Maguin Puig *et al.* vs. The ship James Guthrie, &c. Protest of bill and translation in evidence.

63 Lustros Ano 1856—Seal—69 Rs.

[SEAL.]

Numero tres cientos cuaventa y uno. En la ciudad de Cádiz á treinta y uno Julio de mil ochocientos cincuenta y seis ante mi el escribano publico y terligo paveon Do. Cipriano Lopez Martinez de este vecindam agiuen cenvico de quedor fé y me eczivio para protesto

defaltade pago una letra mimera cin su segunda de cambio givada en Mobile que traduceda al Castellano su tenor dice. Letra y cambio f's cuatro mil. Mobile viente y dos Marzo mil ochocientos un cuenta y seis. A serenta dias vista de esta primera decanbio, no siendo pagadas la segundo intercera, pagnere rila orden de los S'res Puig, Mier y Co. cuatro mil pesos fuertes valor recibido que car gava alu cuenta del fletamento del buque norte Americano James Guthrie para el fenol, Stephen Chase, M'os S'res Abarzuza Hermanos, Cadiz. Endorof Paguere alá orden de los S'res Cahuzac Herm's, Nueva Orleans, veinte y seis Marzo mil ochocientos cincuenta y seis.

PUIG, MIER Y CO.

Otros Pagnere cila orden de Dn. Cipriano Lopez Martinez valor recibido de Dn. Gabriel Lopez Martinez, Habana y Marzo trienta y uno de mil ochocientos cincuenta y seis.

CAHUZAC HERM'S.

(Aceptz.) Aceptamos bajo protesto por honor á le firma de Puig Mier y Ca. primeros endorantos. Cadiz trienta y uno de Marzo de mil ochocientos cincuenta y seis.

ABARZUZA HERMANOS.

(Prouguet.) Cincuya letra y a el escribano siendo las once
64 de la manuna de hoy requeri a Dn. José Abarzuza decile comercio socio de la casade negocios intitulado Abarzuza Hermanos para que satisfuga su importe per ter vemido suplazo de que enterado digo: que la letra cinquerela vegniere y le fué presentada el chadeagu no la paga per las mismas varenes que engniro en el protesto de faltade aceptacion lin embargo de la cual se la deji protestada apercebiendole que los gastos demos y perjuicios que se origin en per la falta de page sevau de cuenta de su sociedad ó de guien mas haya lugar. Y ly firma siendotes tigos Dn. Francisco Espinosa de los monteros y Dn. José Perez vecinos de Cadiz.

ABARZUZA HERMANOS.
JOAQUIN RUBIO.

(Cartade pago.) En sequida el mismo Dn. José Abarzuza manifesto: que para enbrir la obligacion que contrago su casa per le aceptacion puerta en la letra cetaba pronto en satisfacienta per honor y cuenta de los S'res Puig Mier y Ca. y car efecto en mi presencia puso de manifesto su umporte y el de los gastos can su dos en minedas de on y plata que conto y pare asu poder Dn. Cipriano Lopez Martinez que estaber presente y como satisfactiv de anibas su mas forma lizer à favor de la casa pagadorm el mas las tante recibo y cunta de pago que asu derecho y segundad conduzea. Los pone y subroga en su propio lugar y grado cins tetuy en dolos acterer y acrudores en su mesmo hectro y causà para que puedar repetir y colras el unporte y
gastos de otra letra de los endorantes librador y quien mas
65 haya lugar paveciendo sobre ello eujuicio y practicando cuantas diligencios judiciales y estra judiciales se requeiran pues

pena toda los autoriza un que de obligado asa neamiento alguno y lo firman siendo tertigos los referidos Dn. Francisco Espinoza de los Martinez y Dn. José Peres de este vecindario.

CIPRIANO LOPEZ MARTINEZ.
ABARZUZA HERMANOS.
JOAQUIN RUBIO.

Esta conforme consu original que escrito en papel del setto cuanto y antado asu margen esta data quedam mi registro conviente a que me remito. Y para entregar à los S'res Abarzuza Hermanos signo y firmola presento encite pliego del setto de ymitres en cadir diademftia doy fe enmendo bastante ve. Dios coupafelde. Huitas 124 rs.

JOAQUIN RUBIO, *D.*

Los infra scripto erenos damos fé: que Dn. Joaquin Rubio pr. quien esta aulenzada la copia que antecede estreno delamaso honoraria de la cund'a de sevilla y publico de cite numero fiel legal y de confianza y asus senujantes se hadadoy dafey credito entodos juicios Cadiz utanten.

BART'M RIVERA.
SERVANDA AEASO.
DN. FRAN'CO DE PAULA RIVERA Y LOZANO.

[Seal—Dia 31 de Julio 1856.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Cadiz, July 31, 1856.

I certify that the signatures of Bartholomew Rivera, Servando Acaso, and Francisco de Paula Rivera y Lozano, who certify
66 that of Joaquin Rubio, are, as they style themselves, public notaries of this city, and to whose acts as such full faith and credit are here given, in and out of judicature.

Given under my hand and seal of office, in Cadiz, day and year before written.

T. T. TUNSTALL, [SEAL.]
U. S. Consul.

67 *Evidence for libellants.*

Charter-party—Add'l agreement.

This charter-party, made and concluded in the city of New York, this 19th day October, 1854, between Stephen Chase, master and agent for the owners of the ship "James Guthrie," of the burden of 748 tons, or thereabouts, now lying in the harbor of Portsmouth, Va., of the first part, and Joseph E. Murrell, of Mobile, Ala., and Charles T. Stewart, of the second part, witnesseth, that the said party of the first part, and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, does covenant and agree, on the freighting and chartering of the said vessel unto the said party of

the second part, for two voyages from the port of Mobile to such one of the following ports in France, viz: Havre, L'Orient, Rochfort, Brest, Toulon, or to Cadiz, in Spain, as may be determined by the parties of the second part, before the ship clears from Mobile on each voyage. Any one of the above ports used must have sufficient water for the ship to load with safety or discharge.

After discharging her cargo on the first voyage, ship to be at liberty to proceed direct to Mobile or to load at port of discharge, or to proceed to some other port to load for an Atlantic or Gulf port in the United States; after discharge of which cargo to proceed thence direct to Mobile, when the second voyage shall commence on the terms following—that is to say:

68 First. The said party of the first part does engage that the said vessel, in and during said voyage, shall be kept tight, staunch, well fitted, tacked, and provided with every requisite, and with men and provisions necessary for such a vessel.

Second. That the said party of the first part does further engage, that the whole of said vessel (with the exception of the cabin and the necessary room for the accommodation of the crew and of the sails, cable, and provisions) shall be at the sole use and disposal of the said party of the second part during the voyage aforesaid, and that no goods or merchandise whatever shall be laden on board, otherwise than from said party of the second part, or their agent, without their consent, on pain of forfeiture of the amount of freight agreed upon for the same.

Third. The said party of the first part does further engage to take and receive on board of said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the said party of the second part, or their agent, may think proper to ship, as hereinafter specified; and the said party of the second part, and in consideration of the covenants and agreements to be kept and performed by the said party of the first part, does covenant and agree, with the said party of the first part, to charter and hire the said vessel on the terms following—that is to say:

First. The said party of the second part does engage to provide and furnish the said vessel with a full cargo of lawful mer-
69 chandise during the voyage aforesaid, under and upon deck, to consist of masts and spars, with beams, deck plank, and square piece, to make good stowage, and such quantity of staves, oars, and handspikes (at shipper's option as to which kind) as the master may require to chock the cargo and keep it in place.

Second. The said party of the second part does further engage to pay to the said party of the first part or his agent, for the charter or freight of said vessel during the voyage aforesaid, in manner following—that is to say:

Seventy shillings sterling per load for mast and spars, and sixty shillings per load for beams, deck plank, and square pieces; eight pound sterling per 1,200 staves; eighteen pounds sterling per 1,200 handspikes, and for oars 1½, one and a half penny sterling per longitudinal foot, all with 5 p. c. primage, payable, such portion as the mas-

ter may want at the point of discharge for disbursements, in cash, at current rate of exchange, without discount or commission, and the balance in approved sterling bills on London at 90 d'ys' sight or their equivalent in cash, at current rate of exchange, on delivery of cargo on termination of each voyage.

It is further agreed between the parties of this instrument, that the said party of the second part shall be allowed for the loading
70 and discharging of the said vessel at the respective ports aforesaid—that is to say, the cargo to be furnished as fast as required at Mobile, with an allowance of twenty days for detention, free of demurrage, on each voyage, and at the port of discharge the usual despatch. The load to consist of fifty English cubic feet, and the cargo to be measured and calculated by a sworn officer of the government, so as to give the full cubic contents; and in case the vessel is longer detained, the said party of the second part agrees to pay the said party of the first part demurrage at the rate of eighty dollars per day for each and every day so detained, provided such detention shall happen by default of the said party of the second part or their agent.

Ship to be fitted out with timber ports of sufficient capacity to take spars of thirty-two inches diameter.

Ship to be responsible for any loss of cargo after it is delivered alongside, unless the master shall prove that he exercised due care and diligence.

A commission of 5 p. c. on the full amount of freight to be paid Messrs. Dole & Co., being the only commission payable by the vessel. Ship to clear from Portsmouth or Norfolk for Mobile, on or before the 10th Nov. next.

To the true and faithful performance of all the foregoing agreements, the said parties, each to the other, do hereby bind
71 themselves, their heirs, executors, administrators, and also the said vessel, her freight, appurtenances, and the merchandise to be laden on board, each to the other, in the penal sum of $15,000.

In witness whereof the said parties have hereunto interchangeably set their hands this 19th day of October, 1854.

STEPHEN CHASE.
C. T. STEWART,
For self and Jos. E. Murrell.

NATH'L DOYLE,
Witness to signature of C. T. Stewart.

MOBILE, *March 22d*, 1856.

No demurrage is due the ship Jas. Guthrie.
(Signed) STEPHEN CHASE.

Witness to signature:
W. SEDLEY JOHNSON.

(Translation.)

MOBILE, *March 22d*, 1856.

DEAR SIRS: Captain Chase has drawn at 60 d'ys' sight upon Abarzuza Bro's for $4,000, which bill I herewith enclose, and which you will please negotiate, advising me the rate of discount at which you may sell it.

(Signed) JOS. E. MURRELL.

Messrs. PUIG, MIR & Co., *New Orleans.*

72 (Translation.)

MOBILE, 24*th March*, 1856.

DEAR SIRS: I enclose you herewith second of the bill drawn by Captain Chase to your order upon Abarzuza Bro's, of Cadiz, against which I have to advise, having this day drawn upon you at 30 d'ys 1½d for the same amount, $4,000, which please honor; and begging you to inform me the rate of exchange at which you negotiate the same,

I remain, &c.,

(Signed) JOS. E. MURRELL.

Messrs. PUIG, MIR & Co., *New Orleans.*

(Translation.)

MOBILE, 24*th March*, 1856.

DEAR SIRS: Captain Chase, as he advises you by his letter herein, has drawn upon you, as customary, a bill at 60 d'ys' order of Puig, Mir & Co., for $4,000, on account of his freight, and authorizing you to effect insurance upon the same.

(Signed) JOS. MURRELL.

Messrs. ABARZUZA BROTHERS, *Cadiz.*

73 Copy of additional agreement between Capt. Stephen Chase and Jos. E. Murrell, in regard to the charter-party of the ship James Guthrie:

It is agreed upon by the undersigned, parties to the foregoing charter-party, that in case it should be desirable to send the ship James Guthrie, on her arrival off the port, or after her arrival at the port of Ferrol, Spain, and before breaking bulk, to the port of Cherbourg, France, that the party of the second part, Capt. Chase, will proceed on with the ship Ja's Guthrie to the said port of Cherbourg, with the cargo of masts, lumber, &c., for and in consideration, that if the ship, on her arrival off the port of Ferrol, and before entering, be ordered to Cherbourg, that the party of the first part shall pay to the party of the second part the sum of $2,500, and if the ship enters the port of Ferrol, and there incurs port charges, the party of the first part shall pay all port and government char's at Cherbourg, over and above the said $2,500 above specified, to be paid at the port of discharge.

Mobile, 22d March, 1856.

(Signed) JOSEPH E. MURRELL.
STEPHEN CHASE.

If the cargo be discharged at Ferrol, the timber shall be measured by a sworn gov't measurer at that port, and freight paid according to same.

(Signed) JOSE E MURRELL.
STEPHEN CHASE.

74

MOBILE, 22*d March*, 1856.

DEAR SIR: With reference to our conversation upon the subject of a second port in Spain, should it be found desirable by Mr. Mir, your agent, after the arrival of the ship James Guthrie, under my command, at the port of Ferrol, to send the ship with a part or with the whole of her cargo of masts, &c., to Santander, I shall have no objection for the James Guthrie to continue her voyage to that second port of Santander, if the harbor is unobjectionable for vessels of her draught of water, upon Mr. Muir agreeing to pay all extra port charges and expenses that may be incurred in consequence, and to pay a reasonable compensation to the ship, which may be mutually agreed upon between Mr. Muir and myself.

Your ob't serv't,

(Signed) STEPHEN CHASE.

JOSEPH M. MURRELL, Esq., present.

75 District court of the United States, southern district of New York.

Interrogatories to be administered to Joseph E. Murrell, William Sedley Johnson, John W. Murrell, and Alphonso Perez, of Mobile, in the State of Alabama, witnesses to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction now pending in the district court of the United States in and for the southern district of New York, wherein Magin Puig, Ramon Mir, and Juan Bastiste Soulere are libellants against the ship James Guthrie, her tackle, &c., and James W. Phillips is claimant on the part and behalf of the libellants, the commissioner or commissioners in the writ hereto annexed named.

First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the libellants, Puig, Mir & Co.; and if yea, how long have you known them?

Third interrogatory. Do you know the ship James Guthrie; and if yea, how long have you known her?

Fourth interrogatory. Where was said ship on the twenty-second of March, one thousand eight hundred and fifty-six, and at and about that time where did she then belong? Who was then
76 her owner and who was then her master; and was or was not Captain Stephen Chase her master?

Fifth interrogatory. If, by your answer to the foregoing, it shall appear that she was at Mobile, then, when did she arrive there;

how long did she stay there, and when did she depart, and what was ther destination on such departure, and who was her consignee?

Sixth interrogatory. Did or did not said ship receive repairs and fitting out for her voyage while at Mobile; and if she did, who procured said repairs and outfitting? In what did they consist? Were the same necessary; and what was the amount of cost thereof?

Seventh interrogatory. What means had the master of defraying the cost of such outfitting and repairs; and how did he provide means therefor?

Eighth interrogatory. Did you know whether or not the master of said ship applied to any parties for a loan to defray such cost of repairs and outfitting? And if yea, state when, where, how, and to whom he applied; and also state whether such loan was effected, and how and from whom, and upon what paper or vouchers, and on what agreement or lien.

Ninth interrogatory. Do you know whether Puig, Mir & Co., of New Orleans, the libellants in this suit, advanced money
77 to said master upon the credit of said ships for the use of said ship, and whether or not a disbursement bill of said master was drawn for the amount so loaned? If yea, then state the particulars and circumstances thereof fully and at large; and state the amount of such loan, and whether or not the money was paid to the master, and used for the outfitting and repairs of the ship.

Tenth interrogatory. Look at the paper writing hereto annexed, marked A, and purporting to be a bill of exchange for four thousand dollars, and state if you know whether or not the signatures therein, or any of them, and which, are genuine, and whether you are acquainted with the handwriting of the parties making such signatures, and have seen them write, and is or is not said paper writing the disbursement bill or bill of exchange mentioned in your answer to the above questions?

Eleventh interrogatory. Do you know, and if so, state what was the consideration of said bill of exchange; was it, said bill, a principal debt or a collateral security; was it given, received, and taken in payment and absolute satisfaction of a loan made, or was it given, received, and taken as and for a collateral means of payment of such loan; was it given, taken, and received in discharge and satisfaction of a lien on the ship for advances, or as a collateral means of obtaining payment of the debt for which the ship was liable, or how otherwise? State fully and particularly.

78 Twelfth interrogatory. What amount of money raised by the master, and coming from the libellants, was used by the master in said repairs and outfitting?

Thirteenth interrogatory. If you have in your possession and control any correspondence between the said master and any other person or persons, whether letters written by or from said master, or letters or copies of letters written to him touching or concerning said ship or said repairs and outfitting, or said money, or said bill of exchange, or any of the matters mentioned in your deposition, then produce and verify the same and annex them to your deposition.

Fourteenth interrogatory. If you have any other paper or papers in your possession or under your control touching or concerning the said ship, or her repairs and outfitting, or the security therefor, or the means for the same, or the said bill of exchange, or the transmission thereof, or the protest or dishonor thereof, or any other matter or thing material to this suit, then produce and verify the same and annex them to your deposition.

Fifteenth interrogatory. Do you know whether the said master wrote to the drawees of said bill, Abarzuza Bro's, advising them of said bill? And if yea, produce said letter; or if you cannot produce it, give a copy thereof; or if you cannot give a copy thereof,
79 then state all the substance and contents thereof, and state in particular to whom it was addressed, and at what place; when was it written; when and where was it mailed or sent off; how did the time of sending off or mailing the same compare or correspond with that of drawing or sending off, or issuing said bill of exchange, and what was done with said letter, and by whom?

Sixteenth interrogatory. Did or did not any other person than said master, and who, write to said Abarzuza Brothers at or about the same time? If so, who so wrote; when was the letter so written sent off, and from what place; and what were the contents thereof? Produce the original or a copy thereof, if in your power.

Seventeenth interrogatory. Was or was not an answer received to the letter mentioned in your answer to the last above interrogatory? And if yea, who received it, and by whom was it written, and annex the same to your deposition.

Eighteenth interrogatory. Do you know any other matter or thing which may benefit the libellants in this suit? If yea, state the same fully and particularly.

J. ANGUS MANNING,
Proctor for Libellants.

Endorsed: U. S. district court, southern district of New York. Magin Puig *et als.* vs. The ship James Guthrie. Interroga-
80 tories. J. A. Manning, proctor for libellants. Allowed, subject to all proper exceptions. Butler, Evarts & Southmayd, proctors, &c.

In the district court of the United States for the southern district of New York.—In admiralty.

Cross-interrogatories, to be administered on the part of James W. Phillips to Joseph E. Murrell, William Sedley Johnson, John W. Murrell, and Alfonso Perez, of Mobile, in the State of Alabama, witnesses to be examined on the part of the libellants in a cause pending in this court in favor of Magin Puig, Ramon Mir, and Juan Batista Soulere, libellants, against the ship James Guthrie, her tackle, &c., and James W. Phillips, claimant thereof.

First cross-interrogatory. If, in answer to the fourth direct interrogatory, you undertake to name the owner or owners of the ship James Guthrie, at the time therein referred to, state what personal

knowledge you have upon the subject, and how and whence such knowledge was derived.

Second cross-interrogatory. If, in answer to the sixth direct interrogatory, you state that the ship James Guthrie, while at Mobile, received repairs and outfitting, and of what the same consisted, and what was the cost thereof, state what personal knowledge you
81 have in relation thereto. Did you personally superintend the same? Did you see the same put upon or applied to the use of said ship? Did you, and if so, when, how often, and for what purpose, go aboard said ship? Did you pay the bills; and if not, how do you know of their payment? If you state that such repairs and outfittings were necessary, state what personal knowledge you had in respect of the requirements of the ship in such respects, and how such knowledge was derived.

Third cross-interrogatory. If, in answer to the seventh direct interrogatory, you have undertaken to state what means the master had of defraying the cost of the outfitting and repairs there inquired of, and how he provided means therefor, state what personal knowledge you have in respect thereof, and whence derived. How do you know what means for such purpose were in the hands or under the control of said master?

Fourth cross-interrogatory. If, in answer to the eighth direct interrogatory, you shall have stated any application of the master for a loan for the purpose therein mentioned, or the making of any such loan, or the terms of any agreement therefor, state your means of personal knowledge in relation thereto. Were you present at such application, the assent thereto, the making of any agreement
82 in respect thereof, or the paying over of the moneys? If so, who else was present? Was such agreement in writing or by parol? If in writing, what has become of it? If by parol, state fully what was said upon the subject, and by whom, and give the words used as nearly as may be.

Fifth cross-interrogatory. If, in answer to the ninth direct interrogatory, you shall have stated that Puig, Mir & Co., the libellants, advanced money to said master for the use or on the credit of said ship, state how you know such advance was made, on the credit of said ship, or otherwise; whether you were present at the making of any agreement to that effect; and if so, when, where, and between whom such agreement was made; whether it was in writing; and if not, by what words the same was made; and if you shall have stated that the amount of any such loan was paid over to the master, state at what date or dates, and in what sum or sums, in particular, such payment or payments was or were made; through whose hands such payments passed; and how you derive your knowledge in respect thereof; and if you shall have stated that the amount thus advanced, or any part thereof, was used for the outfitting or repairs of the said ship, state to what particular purpose each part thereof was applied, and at what time or times in particular, and how your knowledge thereof is derived.

83 Sixth cross-interrogatory. If, in answer to the eleventh di-

rect interrogatory, you shall have undertaken to state the consideration of the bill of exchange therein referred to, state what personal knowledge you have in that respect, and whence derived.

84 If you shall have stated that such bill of exchange was received by way of collateral security, or that the same was not taken or received in discharge or satisfaction of a lien on the ship for advances, or that any such lien was reserved upon the taking of said bill of exchange, state what personal knowledge you have of the agreement between the parties in those respects, and how it is that you are enabled to state whether or not it was received as collateral security, and whether or not a lien on the ship was reserved; were you present at the making of any agreement in those respects? If so, what persons made such agreement, and when and where? Was it in writing? If so, where is the paper? Was it by parol? If so, give the words by which such agreement was made.

Seventh cross-interrogatory. If, in answer to the twelfth direct interrogatory, you shall have stated that any amount of money coming from the libellants was used by the master of said vessel in her repairs and outfitting, state in full your means of knowledge in respect thereof, and say when and in what sums the moneys were received from the libellants; and when and by whom the same were expended for such purposes, and through whose hands the moneys passed, and state the particulars of the repairs and outfittings.

Eighth cross-interrogatory. Where do the libellants reside? At what time was the said bill of exchange delivered to them?

85 State the exact amount of the consideration by them allowed therefor. At what rate of exchange did the libellants take said bill? Did they not purchase said bill at the rate in the ordinary course of business? To whom did the libellants pay over the sum allowed for said bill of exchange?

Ninth cross-interrogatory. While the ship James Guthrie was at Mobile, upon the occasion referred to in the direct interrogatories, was she under charter? If so, to whom, for what voyage, and upon what terms? Were you, or was any house or person with whom you were connected as partner, clerk, or agent interested in such charter; or in the furnishing the cargo or loading the vessel thereunder; or did you, or such house or person with whom you were connected act as agent or agents of the charterers, or act as agent or consignee of the ship, or transact any, and what, business for her account while at Mobile on the occasion aforesaid? If so, state, in detail, all the transactions as such agent or consignee of the ship, or charterers or charterer's agent, and annex copies of the accounts relating thereto. Did you, or such house or person with whom you were connected, have charge of the disbursements of said vessel while at Mobile? What

86 was the whole amount of such disbursements, and when, in particular, were the same made, and how and when were the same reimbursed? What commissions were charged thereon? Were the proceeds of the bill of exchange, before mentioned, or any moneys for which such bill was given, applied in such reimbursements? If so, what amount was credited therefor, and when and

what charges or deductions were made for or on account of exchange or commissions on said bill? Was any account in relation to the disbursements of said vessel, upon the occasion aforesaid, or the repayment thereof, or relating to the said bill of exchange, or the moneys advanced or paid therefor, rendered by you or any house or person with whom you were connected as partner, agent, or clerk, to the master of said vessel? If so, when and where? Have you such account or a copy thereof? If so, produce the same and annex it to your deposition.

Tenth cross-interrogatory. When did said ship, James Guthrie, sail from Mobile, where was she bound, with what cargo, and by whom supplied? What was the amount of her freight or charter-money on such voyage? To what house in Spain was she consigned?

Eleventh cross-interrogatory. Do you know of the master of said vessel having written a letter to Abarzuza Bros., of Cadiz, the drawees of the bill of exchange before-mentioned, instructing them to insure the freight of said vessel on such voyage to any, and what, amount? What did the captain do with such letter? Did he deliver it to any one for transmi*ttion*; and if so, to whom, and when, and with what instructions, and were such instructions assented to, or was any, and what, notification given to the captain that they would not be followed? Who *surjested* to the captain such mode of transmi*ttion* of said letter?

Twelfth cross-interrogatory. Were you, or was any house or person, with whom you were connected as partner, clerk or otherwise, interested in the charter of said ship, James Guthrie, on a previous voyage, either as principal or agent? From and to what port or ports did said vessel go upon such previous voyage, with what cargo, by whom supplied, and who was consignee of said vessel and of such cargo on such voyage? Upon such previous voyage, did the master or owners of said vessel give any, and what, instructions for insuring the freight; and if so, to whom were such instructions given, and through what channel, and where was the insurance to be effected? Did the vessel arrive safely on such previous voyage? Was any, and if so, what amount charged to, and allowed by, the said ship and her owners for insurance of such freight under such instructions; if so, what was the amount so charged and allowed? Upon what amount of insurance, when, where, and by whom stated to have been effected, and at what rate of premium? Do you know whether or not such insurance was actually effected?

Thirteenth cross-interrogatory. If, in answer to the thirteenth or fourteenth direct interrogatory, you produce any copy of letters stated to have been addressed to the master of said vessel, state whether you have any; and if so, what knowledge of the receipt by said master of the originals thereof.

Fourteenth cross-interrogatory. If you shall have stated, in answer to any of the interrogatories, the transmi*ttion* to Abarzuza Brothers of the letter to them, written by the master of the ship James Guthrie, instructing them to insure the freight of the said ship, state by what channel the same was transmitted to them, at what particular date

in particular, and at how much earlier a period the same could have been transmitted.

Fifteenth cross-interrogatory. Were the libellants, Puig, Mir & Co., in any way interested, directly or indirectly, in the charter of the ship James Guthrie, which was pending at the time they took the said bill of exchange, or in the cargo which was furnished to said vessel on the voyage, commencing about that time? If so, state the nature and extent of such their interest.

89 Sixteenth cross-interrogatory. Is Joseph E. Murrell, or John W. Murrell, or any person other than Puig, Mir & Co., and if so, who, interested in the claim involved in this suit, or in the bill of exchange before-mentioned, or was any person, other than Puig, Mir & Co., so interested at the time of the commencement of this suit, or at any time afterwards; if so, what was or is the nature and extent of any such interest of any person, other than Puig, Mir & Co.?

BUTLER, EVARTS & SOUTHMAYD,
Proctors for Claimant.

Endorsed: United States district court, southern district of New York. In admira'ty. The ship James Guthrie and James W. Phillips, claimant, *ads.* Magin Puig and others. Cross-interrogatories. Butler, Evarts & Southmayd, pro. for cl'm't.

To J. A. MANNING, Esq.,
Proctor for Lib'ts.

Allowed, subject to all proper objections.

J. A. MANNING,
Proctor, &c.

90 A.

Julio 30. 1277.

Exchange for $4,000 $\frac{00}{100}$—Rs. 80,000.

MOBILE, *March* 22, 1856.

Sixty days after sight of this first of exchange, (second and third unpaid,) pay to the order of Messrs. Puig, Mir & Co. four thousand $\frac{00}{100}$ dollars, value received, and charge the same to account of freight of Amr. ship James Guthrie, for Ferrol.

To Messrs. ABARZUZA HERM'S, *Cadiz.*

No. 292. STEPHEN CHASE.

Endorsed: Pay to the order of Messrs. Cahuzae Bros.
PUIG, MIR & CO.

New Orleans, March 26, 1856.

Pagnese á la orden de D. Cipriano Lopez Martinez valor recibior de D. Gab'l Lopez Martinez. Habana y Marzo 31. de 1856.
CAHUZAE HERM'S.

{ Gabriel Lopez Martinez, }
{ (No. 1,609.) Habana. }

91 Reuntegro anna prem'r de f's cuatro mil guadaen Mobila el 22 de Marzo a codias vuta orden de Puig, Mir y Ca. y cargo de Abarzuza Herm's pr. Stephen Chase.

Endorsed: Aceptanier cato protedo par honor á la firma de Puig, Mir y Ca. primeros endorsantos Ca. dal 31 de Marzo de 1586.

{ De 70,001, R. A. }
{ 80,000 32, R. A. }

At the execution of a commission for the examination of witnesses between Magin Puig and others, libellants, and the ship James Guthrie, her tackle, &c., James W. Phillips, claimant and respondent, this paper writing, marked A, was produced and shown to Joseph E. Murrell, John W. Murrell, and W. S. Johnson, and by them deposed unto at the time of their examination, before—

R. B. OWEN,
LEWIS S. LUDE,
Com'rs.

92 A.

Exchange for $4,000 $\frac{00}{100}$.

MOBILE, *March* 22, 1856.

Sixty days after sight of this second of exchange, (first and third unpaid,) pay to the order of Messrs. Puig, Mir & Co., four thousand $\frac{00}{100}$ dollars, value received, and charge the same to account of freight of Amr. ship James Guthrie, for Ferrol.

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PUIG, MIR Y CA.

N. Orleans, March 26, 1856.

Pagnese á la orden de D. Cipriano Lopez Martinez, valor recibior de D. Gab'l Lopez Martinez.
Habana, y Marzo 31 de 1856.

CAHUZAE HERM'S.
CIPRIANO LOPEZ MARTINEZ.

{ Gabriel Lopes Martinez, }
{ (No. 1,669,) Habana. }

At the execution of a commission for the examination of witnesses between Magin Puig and others, libellants, and the ship James
93 Guthrie, her tackle, &c., James W. Phillips, claimant and respondent, this paper writing, marked A, was produced and shown to Joseph E. Murrell, Jno. W. Murrell, and W. S. Johnson, and by them deposed unto at the time of their examination before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

94 Depositions of witnesses produced, sworn, and examined the day of October, in the year one thousand eight hundred and fifty-seven, at the office of Owen and Lude, in the city of Mobile, and State of Alabama, under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause depending and at issue between Magin Puig and others, libellants, and the ship James Guthrie, her tackle, &c.; James M. Phillips, claimant and respondent, as follows:

Joseph E. Murrell, of the city of Mobile, merchant, aged forty-eight years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

First. To the first interrogatory he says: My name is Joseph E. Murrell; I am 48 years of age; my occupation is that of a merchant; and I reside in the city of Mobile.

Second. To the second interrogatory he says: I have known the libellants, Puig, Mir & Co., since 1850.

Third. To the third interrogatory he says: I have known the ship James Guthrie since the year 1854.

95 Fourth. To the fourth interrogatory he says: The ship James Guthrie was in the bay of Mobile about the 22d of March, 1856. She belonged, at that time, to Page & Allen, of Portsmouth, Virginia; and Stephen Chase was her master, as it appears from my correspondence with them as such owners.

Fifth. To the fifth interrogatory he says: The ship James Guthrie arrived in Mobile bay about the 25th of January, 1856, when I loaded her with a cargo of spars and naval timber for Ferrol, Spain, for which port she sailed from Mobile bay towards the end of March, 1856, consigned to the order of Abarzuza Bro's, Cadiz.

Sixth. To the sixth interrogatory he says: The ship James Guthrie was fitted out and supplied for her said voyage to Ferrol at Mobile. I do not know if the captain made any repairs on the ship whilst at Mobile. I do not know of what the said fittings-out and supplies consisted, nor the cost thereof.

Seventh. To to the seventh interrogatory he says: I know the said master, Stephen Chase, had no means of his own, as he, himself, told me so; and also that he could not get his ship away from Mobile unless he could raise means to pay her disbursements by drawing on his consignees, Abarzuza Bro's, of Cadiz, against his freight.

96 Eighth. To the eighth interrogatory he says: Captain Chase applied to me, as the consignee of the ship James Guthrie, for funds to pay his ship's disbursements at Mobile. I advanced him, temporarily, until I could get his bill negotiated for him, and at his urgent request, four thousand dollars for that purpose against his bill, at 60 days, upon his consignees at Cadiz, Abarzuza Bro's, on account of his freight.

Ninth. To the ninth interrogatory he saith: The libellants, Puig, Mir & Co., New Orleans, advanced the amount required by Capt. Chase for the disbursements of his ship, the James Guthrie, at this

port, and to enable him to proceed on his voyage to Ferrol, by taking his said bill of me, for $4,000, at par; (the actual rate of exchange was to have been fixed at a later period,) at 60 days, upon Abarzuza Bro's, of Cadiz, his consignees there, against his freight; which amount reimbursed me the temporary loan I had made Capt. Chase for that purpose, until his said bill could be negotiated. Said amount was applied by Capt. Chase in paying the disbursements of his ship, such as ship chandlers, stevedores, and other bills, as he himself told me, and which statement of his was confirmed by several of the parties, whose bills against the ship James Guthrie he had so paid. If any of the ship's bills had been left unpaid by Capt. Chase at Mobile, they would, as usual, have been presented to me as consignee
97 of the ship for payment; but no such unpaid bills, if any there were, were ever presented to me.

Tenth. To the tenth interrogatory he says: I have examined the paper writing attached to the annexed commission and marked A. It is the second of the bill of exchange for $4,000, drawn by Capt. Chase upon the consignees, Abarzuza Bro's, of Cadiz, and the signature of the drawer of the same, and of Puig, Mir & Co., the first endorsers on the same, are all genuine, and I know the handwriting of both parties and have seen them write. I am not acquainted with the signatures of the other two indorsers on said bill.

Eleventh. To the eleventh interrogatory he says: The disbursement bill or bill of exchange for $4,000, above described, at 60 days, was drawn by Stephen Chase, master of the ship James Guthrie, then lying in the lower bay of Mobile, upon his consignee at Cadiz, Abarzuza Bro's, on account of the freight of said ship, from Mobile for Ferrol, in consideration of the said temporary loan of four thousand dollars, made by me on the 22d March, 1856, upon said Chase's disbursement bill for same amount, until said bill could be sold or negotiated by me for Captain Chase, on account of the ship James Guthrie and owners. I did not take the said bill in discharge and satisfaction of a lien on the ship for the advance, but as a col-
98 lateral means of obtaining payment for which Captain Chase told me the said ship James Guthrie and owners were liable.

As consignee of said ship at Mobile, I made the said temporary loan of $4,000 to Capt. Chase to avoid delay in getting his ship to sea by enabling him to pay the disbursement bills at Mobile.

Twelfth. To the twelfth interrogatory he says: I do not know what amount of the money I loaned to Capt. Chase was used by him in paying the disbursement bills of the ship James Guthrie, which bills, as Capt. Chase told me, amounted to about $4,000.

Thirteenth, fourteenth. To the thirteenth and fourteenth interrogatories he says: The whole of the correspondence and papers relating to this transaction have been forwarded to Mr. J. Angus Manning at New York, and in consequence are not now in my possession.

Fifteenth. To the fifteenth interrogatory he says: On the 22d March, 1856, Capt. Chase wrote to the consignees of the James Guthrie at Cadiz, Abarzuza Bro's, advising that he had that day drawn

upon them at 60 days against his freight for $4,000 to pay that ship's disbursements in Mobile, a copy of which letter is as follows:

MOBILA, 22 *Marza*, 1856.

S'rs ABAZUZA HERM'NOS, Cadiz: Mary S'rs Mios—Despachado en este dia la I regata Am'na de mi mandi clamada "James
99 Guthrie" cujo cargm'to de crente once perchas de arboladuro y otras maderas nurates este destinado pura el asenal del Ferrol—Ponqe en conocromiente de p'r que cur el objeto de degar cubiertos los desan bolsos erogados per el citado buqari duranto su permanencia en este puerto, he girado con esta misma fecha y No. 292 a la orden de los Se'rs Puig, Mir & Co., de New Orleans, y a 60 per ct. to 3d de cambro per valor de $4,000 la cual espero se serviran aceptor a cuenta del importe de me flete quandando p'r para su enguardo debidamento an tongados per la primente para aquero per igual contidal de aguel, disimulando la molestia tengo el gusto de subscribesined.

Su. af'd S. S. 2 m M.
(Signed) STEPHEN CHASE.

P. S. Al afectuar el ereguro faculto a p'r fe que loha gnu por los $4,000 masta la diferentia que remitto del Cambia gustos of comision.
(Signed) STEPHEN CHASE.

The said letter of advice, of which the above is a copy, was enclosed in Capt. Chase's own request in the letter which I was writing to Abarzuza Bro's, to go by the same steamer for Europe, via New York.

My said letter, enclosing Capt. Chase's letter of 22d March, 1856, was mailed at Mobile on the morning of the 24th March, 1856.

Sixteenth. To the sixteenth interrogatory he says: I wrote to Abarzuza Bro's on the 24th March, 1856, informing them also
100 that Captain Chase had drawn upon them, as stated above, a copy of which letter, at the instance of Puig, Mir & Co., I forwarded to J. Angus Manning, of New York.

Seventeenth. To the seventeenth interrogatory he says: Abarzuza Bro's wrote me on the 10th May, 1856, owning receipt of my letter to them of the 24th March previous, and also of the letter of Captain Chase to them of the 22d March, advising me that Capt. Chase's bill upon them of the 22d March, 1856, had been protested, as they had not been able to insure his freight, against which it was drawn, either in Spain or in France, as freight in both said countries was not a legally insurable risk. I forwarded a copy of said letter to J. Angus Manning, of New York, by direction of Puig, Mir & Co.

Eighteenth. To the eighteenth interrogatory he says: I have already stated all the facts in my knowledge which are of benefit to the libellants.

First. To the first cross interrogatory he says: I know that Page & Allen, of Portsmouth, Virginia, were the owners of the ship James Guthrie about the 22d March, 1856, from having correspondence with them as such.

Second. To the second cross interrogatory he says: I do not
101 know if the ship James Guthrie received repairs at Mobile,
in 1856. I do know that she was fitted out and supplied at Mobile for the voyage to Ferrol, Spain. I do not know of what said supplies and fittings out consisted, nor their cost. I did not superintend them nor pay the bills, Capt. Chase having relieved me as consignee from doing so, by paying his disbursement bill himself, as is frequently done here.

Third. To the third cross interrogatory he says: I know that Capt. Chase, of the ship James Guthrie, received on the 22d March, 1856, my check for four thousand dollars, which check I handed to him, and for which amount said Capt. Chase wrote a receipt in my receipt book in my presence. I further know that my said check for $4,000 was duly paid by the bank on which it was drawn, and the said amount of $4,000 charged to my account with said bank. Capt. Chase distinctly declared to me that he had no other means of defraying the ship James Guthrie's disbursements, except by drawing against his freight as aforesaid, and that unless he could raise the means by drawing upon his consignees at Cadiz on account of his freight, he could not disburse his ship and get her to sea. Capt. Chase further stated to me, on my suggesting that he should draw upon his owners,
102 that he could not do so, and that he was directed by his owners to draw against his freight upon his consignees in Spain.

Fourth. To the fourth cross-interrogatory he says: Chaptain Chase, of the ship James Guthrie, applied to me to advance him funds to pay his ship's bills in Mobile, as he repeatedly stated to me that he had no other means of paying them, and I accordingly loaned him temporarily the sum he said he would require for that purpose, viz., $4,000, until he could negotiate his said bill upon his consignees, which he drew at 60 days upon them, Abarzuza Bros., of Cadiz, and advised his said bill, as before stated. W. Sedley Johnson was present at all these conversations.

Fifth. To the fifth cross-interrogatory he says: Puig, Mir & Co., of New Orleans, the libellants, by purchasing of me Capt. Chase's said bill for $4,000 upon Abarzuza Bros., of Cadiz, did advance this amount, which was required by Capt. Chase to disburse his ship at Mobile and enable her to go to sea; and by which sale of said bill of Capt. Chase to Puig, Mir & Co., I was reimbursed the temporary loan I had made to Capt. Chase for that purpose, until his said bill could be negotiated. This amount of $4,000 was applied, as Capt. Chase declared to me, to the payment of his ship's disbursement bills; and if any such bill, due by the said ship at Mobile, had
103 been left unpaid when she went to sea, they would have been presented as usual to me, as consignee, for payment. No such unpaid bills of the ship James Guthrie, at Mobile, were ever presented to me for payment after the ship left Mobile.

Sixth. To the sixth cross-interrogatory he says: The four thousand dollars aforesaid, loaned by me temporarily to Capt. Chase, was the consideration of the said disbursement bill, or bill of exchange for $4,000, which the said master declared he required to disburse his

ship and get her to sea, and which the said master, Stephen Chase, confirmed by his letter of the 22d March, 1856, to Abarzuza Bros., of Cadiz, in which letter he advises them of his having drawn upon them, as before stated. A copy of which letter I have given in my answer to the 15th direct interrogatory. The said bill of $4,000 was taken by me as collateral security for obtaining payment of said advance, for which said ship James Guthrie and owners were considered liable, as is always understood and customary, for the means advanced the said captain at his request, and for the special purpose of paying the disbursements of his said ship. Under no other circumstances would I have undertaken to negotiate the captain's said bill for him. W. Sedley Johnson was present at the making
104 of all the agreements in the transaction.

Seventh. To the seventh cross-interrogatory he says: For answer to this cross-interrogatory I would refer to my answer to the fifth cross-interrogatory.

Eighth. To the eighth cross-interrogatory he says: The libellants, Puig, Mir & Co., reside in New Orleans. I sent to them on the 22d March, 1856, by mail, Captain Chase's said bill for $4,000 upon Abarzuza Bros., of Cadiz, drawn against his freight. They, Puig, Mir & Co., bought of me the said disbursement bill of Capt. Chase for $4,000, at par of exchange and in the ordinary course of business. I drew upon them the next day, 24th March, 1856, in reimbursement of my temporary loan to Capt. Chase, until his said bill could be negotiated at 30 days' sight, in order to give ample time for said bill to be negotiated, as such bills are generally difficult to negotiate. The amount of my said bill at 30 days' sight, upon Puig, Mir & Co., was for $4,000, the par amount of Capt. Chase's bill upon Abarzuza Bros., of Cadiz; and my said bill upon Puig, Mir & Co., at 30 days, for $4,000, was accepted and paid by them at maturity.

Ninth. To the ninth cross-interrogatory he says: The ship James Guthrie was chartered in New York on the 19th October,
105 1854, by me and C. F. Stewart, to come to the lower bay of Mobile, and there load two successive cargoes of masts and naval timber; and on the 22d March, 1856, she finished taking on board her second cargo under said charter for Ferrol, Spain, on account of my contract with the Spanish gov't at seventy shillings sterling per load for masts, and sixty shillings sterling per load for timber, with five per cent. primage. Puig, Mir & Co., the libellants, and myself, were the parties interested in said charter, and we furnished the cargo. I did not transact any business for the ship James Guthrie, except the aforesaid temporary loan to the captain, until his said bill could be negotiated, to enable him to pay his ship's disbursements at Mobile. I did not have charge of the disbursements of said ship. Captain Chase, the master, paid them himself. I do not know the amount of said disbursements, but, judging from some of the bills I have seen, and know were paid, I believe they must amounted, in the aggregate, to $4,000, as stated to me by Captain Chase. No commission was charged by me on the James Guthrie

disbursements, but I knew the amount, as stated to me by Captain Chase, was about $4,000.

Tenth. To the tenth cross-interrogatory he says: The ship James Guthrie sailed from Mobile bay about the latter part of March,
106 1856, bound for Ferrol, Spain, with a cargo of masts and naval timber, furnished by me and Puig, Mir & Co. Her freight list for that voyage amounted, with primage, to £2,519 10 6, (two thousand five hundred and nineteen pounds $\frac{10}{6}$ sterling;) she was consigned to the order of Abarzuza Bros., Cadiz.

Eleventh. To the eleventh cross-interrogatory he says: Captain Chase, of the ship James Guthrie, wrote to Abarzuza Bros., the drawees of his said bill of exchange, on the 22d March, 1856, directing them to insure the freight of the "Jas. Guthrie" to the extent of $4,000, the amount of his said bill upon them against his freight, adding thereto the premium, their commission, and expenses. Capt. Chase handed to me his said letter of advice, and requested that I would forward it, in order to better insure its prompt and safe reception, enclosed in my letter to Abarzuza Bros., which I was writing to them, to go on the 24th March, 1856, via New York, per steamer to Europe; and the said letter of advice was so forwarded, being mailed at Mobile on the morning of the 24th March, 1856. This course of transmi*tion* of said letter of advice was *surgested* to me by Captain Chase, and I complied with it.

Twelfth. To the twelfth cross-interrogatory he says: The ship James Guthrie had already made one voyage to Toulon, France, con-
107 signed to B. Aubon, under her charter of 19th October, 1854, to me and C. T. Stewart, jointly, for which voyage her cargo of masts and naval timber was supplied to C. T. Stewart and his partner, John W. Murrell, on account of their contract with the French government. Upon that voyage the said master, Stephen Chase, drew upon his consignee at Toulon, B. Aubon, for francs 19,610, and upon my recommendation, (as in the present case, to Puig, Mir & Co.,) and assuring the takers that the bill was good, it was negotiated through a banking-house at Mobile; said bill upon B. Aubon was against his, Capt. Chase's, freight, or the freight of his ship, the James Guthrie, which freight he ordered the drawee to insure to an equal amount, to raise the means to pay his ship's disbursements at Mobile, which bill was paid by his said consignee at Toulon. A copy of Capt. Chase's said letter of advice to B. Aubon is embodied in W. S. Johnson's answer to this cross-interrogatory, and another copy thereof is in the possession of J. Angus Manning, of New York. The James Guthrie delivered her said cargo of masts and naval timber safely at Toulon, in that voyage; the said freight was insured in France, as directed by Capt. Chase, sous l'honneur, not being a legally insurable risk by the laws of France. I know nothing of the amount charged to and allowed by the said ship and her owners for said insurance, nor the rate of premium paid for the same.

108 Thirteenth. To the thirteenth cross-interrogatory he says: I wrote to Capt. Chase on the 2d May, 1856, in answer to his letter to me from Key West, dated 15 April, same year, informing

me that his ship, James Guthrie, had been ashore, and was then at Key West. A copy of said letter was embodied in the answer of W. S. Johnson to this 13th cross-interrogatory.

Fourteenth. To the fourteenth cross-interrogatory he says: The letter of Capt. Chase, dated 22d March, 1856, to Abarzuza Bros., of Cadiz, his consignees, advising them that he had drawn upon them against his freight for $4,000 to pay his disbursements, was mailed at Mobile on the 24th March, enclosed, by Capt. Chase's request, in my own letter to Abarzuza Bros., to go by the first steamer at New York or Boston for Europe. The said letter of Capt. Chase could not have reached Europe sooner than it did, had it been mailed at Mobile on the morning of the day previous, the 23d March, 1856. It was written on the evening of 22d March, too late to go by the northern mail from Mobile of that day to New York. Captain Chase could have mailed his own letter on the 23d March if he had wished to do so, but he preferred, for better security, that it should go enclosed in mine of 24th March.

Fifteenth. To the fifteenth cross-interrogatory he says: The libellants, Puig, Mir & Co., were only interested in the charter of
109 the James Guthrie for Ferrol, inasmuch as she took under said charter the cargo of spars and naval timber, in which they were interested to the extent of $\frac{2}{6}$ths, myself being interested therein for the remaining $\frac{3}{6}$ths.

Sixteenth. To the sixteenth cross-interrogatory he says: No one else but Puig, Mir & Co., so far as I know, were interested in the claim involved in this suit, or in the aforesaid bill of exchange. I was not interested therein, neither was John W. Murrell, at the time of commencing this suit, nor at any time afterwards.

JOS. E. MURRELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 24th day of Oct., 1857, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

110 John W. Murrell, of the city of Mobile, merchant, aged twenty-seven years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined, on the part of the libellants, doth depose and say:

First. To the first interrogatory he says: My name is John W. Murrell; I am twenty-seven years of age; my occupation is that of a merchant, and I reside in the city of Mobile.

Second. To the second interrogatory he says: I have known the libellants Puig, Mir & Co., since 1850.

Third. To the third interrogatory he says: I know that the ship James Guthrie has been loaded twice in the port of Mobile. The first time, to my knowledge, was in March, 1854.

Fourth. To the fourth interrogatory, he says: I know that the ship James Guthrie was in the port of Mobile, in March, 1856. I

have seen by the correspondence between Jos. E. Murrell and Page & Allen, of Portsmouth, Virg'a, that Page & Allen were owners of the ship James Guthrie at that time; Captain Stephen Chase was her master.

111 Fifth. To the fifth interrogatory he says: I know that the ship James Guthrie arrived at the port of Mobile in January, 1856, and took a cargo of masts and naval timber destined for Ferrol, in Spain, consigned to the order of Abarzuza Brothers, of Cadiz, for which port of Ferrol she sailed about the end of March, 1856.

Sixth. To the sixth interrogatory he says: I do not know that the ship James Guthrie received any repairs in Mobile, nor anything about her fittings out and supplies for the voyage to Ferrol, nor the cost thereof.

Seventh. To the seventh interrogatory he says: I heard Capt. Chase state to Joseph E. Murrell that he had no means of defraying the disbursements of the ship James Guthrie at Mobile, and that he wished to draw upon his consignees at Cadiz for the same against his freight. He provided means in this way.

Eighth. To the eighth interrogatory, he says: I know that Capt. Chase applied to Joseph E. Murrell to loan him $4,000 to pay his ship's disbursements until he could get a bill upon Abarzuza Bro's, his consignees, of Cadiz, for $4,000 negotiated. I knew that Capt. Chase received a check on the 22d March, 1856, from Joseph E. Murrell for said amount of $4,000, as per his receipt, and

112 that said check was duly paid on presentation at the bank on which it was drawn. I have seen Capt. Chase's letter of the 22d March, 1856, to Abarzuza Bro's, of Cadiz, advising that he had drawn the aforesaid bill upon them, dated 22d March, 1856, at 60 days for $4,000, to pay his disbursements here, and directing them to insure the freight of the James Guthrie to an amount to cover his said bill of expenses.

Ninth. To the ninth interrogatory he says: I have seen, by an inspection of Joseph E. Murrell's books and correspondence, that Puig, Mir & Co., of New Orleans, bought Capt. Chase's said disbursement bill for $4,000, and that they paid the draft of $4,000, drawn upon them by Joseph E. Murrell, at maturity.

Tenth. To the tenth interrogatory he says: I know that the signatures of Stephen Chase, the drawer, and of Puig, Mir & Co., first endorsers on Capt. Chase's said bill for $4,000, attached to this commission and marked A, are genuine. I know the handwriting of both of these parties, and have seen them write. I don't know the other signatures upon said bill.

113 Eleventh. To the eleventh interrogatory he says: In answer to this question I know nothing further than what I heard at the time, and have seen by the books and correspondence of Jos. E. Murrell.

Twelfth. To the twelfth interrogatory he says: I do not know what portion of the $4,000, loaned Capt. Chase by Joseph E. Murrell, was applied by the said captain to paying off his disbursement bills, nor what was their amount.

Thirteeth. Fourteenth. To the thirteenth and fourteenth he says: I see by the correspondence of Joseph E. Murrell, that he has forwarded the papers relating to this matter to New York, to the proctors of the libellants in that city.

Fifteenth. To the fifteenth interrogatory he says: I know that Capt. Chase wrote to Abarzuza Bro's, of Cadiz, advising his bill upon them, on the 22d March, 1856. I know nothing of my own knowledge of the transmission of this letter to its destination.

Sixteenth. To the sixteenth interrogatory he says: I have seen by the correspondence of Jos. E. Murrell that he wrote to Abarzuza Bro's of Cadiz, relative to Capt. Chase's said bill upon
114 them.

Seventeenth. To the seventeenth interrogatory he says: I can only say, in answer to this interrogatory, that by reference to the correspondence of Joseph E. Murrell, I find therefrom that an answer was received by him from Abarzuza Bro's to the letter mentioned in the last answer.

Eighteen. To the eighteenth interrogatory he says: I know nothing further than I have already stated.

First. To the first-cross interrogatory he says: I have seen by the correspondence of Page & Allen, of Portsmouth, Virginia, that they were owners of the ship James Guthrie, about the 22d March, 1856.

Second. To the second cross-interrogatory he says: I know nothing about the disbursement bills of the ship James Guthrie, at Mobile, in March, 1856.

Third. To the third-cross interrogatory he say: Being a son of Joseph E. Murrell, having my office in the same building as
115 his, and being acquainted with the details of his business, I had the opportunity of knowing, of my own knowledge, that Capt. Chase of the ship James Guthrie obtained from Joseph E. Murrell, on the 22d March, 1856, a loan of $4,000, for which I have seen his receipt.

Fourth. To the fourth cross-interrogatory he says: I was present when Capt. Chase applied to Joseph E. Murrell for a loan of $4,000, to pay the disbursements of the ship James Guthrie, and I know that Joseph E. Murrell handed to Capt. Chase on the 22d March, 1856, his check for $4,000, which check was paid on presentation. I have seen Capt. Chase's receipt to Joseph E. Murrell for that amount.

Fifth. To the fifth cross-interrogatory he says: I have seen, by the correspondence of Joseph E. Murrell, that Puig, Mir & Co. bought the bill of him, which Capt. Chase drew on the 22d March, 1856, upon Abarzuza Brothers, of Cadiz, for $4,000, and that Puig, Mir & Co. paid, at maturity, the draft which Jos. E. Murrell drew upon them at 30 days for his reimbursement of that amount. I know nothing about the disbursement bills of the ship James Guthrie.

116 Sixth. To the sixth cross-interrogatory he says: I saw by the books of Joseph E. Murrell, that the consideration of Captain Chase's said bill for $4,000 upon Abarzuza Bro's, of Cadiz, was the $4,000 loaned by Joseph E. Murrell to Capt. Chase on the 22d

March, 1856, to enable him to pay the disbursements of the ship James Guthrie.

Seventh. To the seventh cross-interrogatory he says: I do not know what amount of the money raised by Capt. Chase from his bill of $4,000 upon Abarzuza Bro's, of Cadiz, and bought by Puig, Mir & Co., he expended in paying his disbursement bills.

Eighth. To the eighth cross-interrogatory he says: The libellants, Puig, Mir & Co., reside in New Orleans. I have seen by the books of Joseph E. Murrell that they paid his bills upon them for $4,000, in reimbursement of his loan of the same sum to Capt. Chase to pay his disbursement bills, at Mobile, for the ship James Guthrie.

Ninth. To the ninth cross-interrogatory he says: I know, from being interested in the first voyage which the James Guthrie made in 1854, under her charter of October, 1854, for two voyages, that she
117 was loaded at Mobile, in March, 1856, with a cargo of masts and naval timber timber for Ferrol, in Spain, which cargo was furnished by Jos. E. Murrell, at the freight of seventy shillings sterling per load for masts, and sixty shillings per load for timber. I believe that Puig, Mir & Co. were interested with Joseph E. Murrell in said cargo for Ferrol, Spain. I know nothing about the disbursements of the ship James Guthrie at Mobile, nor of any commissions on the same.

Tenth. To the tenth cross-interrogatory he says: The ship James Guthrie sailed from the bay of Mobile, towards the end of March, 1856, for Ferrol, with the cargo of masts and naval timber mentioned in my last answer, which said cargo was shipped by Joseph E. Murrell. She was consigned to Abarzuza Bro's, of Cadiz.

Eleventh. To the eleventh cross interrogatory he says: I saw the letter of the 22d March, 1856, which Capt. Chase wrote to Abarzuza Bro's, Cadiz, advising his bill upon them for $4,000, as aforesaid, against his freight. I know nothing of my own knowledge of the transmi*ttion* of this letter.

Twelfth. To the twelfth cross-interrogatory he says: My partner, C. T. Stewart, chartered, in New York, on the 19th October, 1854,
118 jointly with Jos. E. Murrell, the ship James Guthrie, to make two voyages laden with masts and naval timber. I loaded the James Guthrie in January, 1855, at Mobile, with a cargo of masts and timber, provided by my said partner, C. T. Stewart and myself, for Toulon, France, in part execution of our contract with the French government. The James Guthrie cleared at Mobile for the said voyage to Toulon on the 25th January, 1855, consigned to B. Aubon of that port. Capt. Chase drew upon said consignee, B. Aubon, on the 27th January, 1855, for 19,610 francs against his freight for that voyage, to enable him to pay the James Guthrie's disbursements at Mobile, and he negotiated his said bill through a banking house of Mobile, and wrote said consignee, B. Aubon, to insure his freight to cover his said bill upon B. Aubon, a copy of which letter is embodied in the answer of W. L. Johnson to this cross-interrogatory. Capt. Chase's bill for 19,610 francs upon his consignee, B. Aubon, of Toulon, was duly paid by said consignee at maturity. The James

Guthrie delivered her said cargo safely at Toulon upon that voyage. I know nothing of the commission charged by said consignee. The freight of the James Guthrie, to cover Capt. Chase's said bill for 19,610 francs, was insured in France, sous l'honneur, freight not being a legally insurable risk in France.

Thirteenth. To the thirteenth cross-interrogatory he says: I know nothing of my own knowledge in answer to this cross-interrog-
119 atory.

Fourteenth. To the fourteenth cross-interrogatory he says: I know nothing of my own knowledge about the transmission to Europe of Capt. Chase's letter of 22d March, 1856, to Abarzuza Bro's, of Cadiz, advising his bill upon them for $4,000. I believe it was forwarded by Joseph E. Murrell on the 24th March, 1856, as appears by his correspondence.

Fifteenth. To the fifteenth cross-interrogatory he says: I have seen by the books of Jos. E. Murrell that Puig, Mir & Co. were interested with him in the cargo laden on ship James Guthrie for Ferrol.

Sixteenth. To the sixteenth cross-interrogatory he says: I was not interested in the claim involved in this suit, nor in the bill of exchange, before mentioned, at the time of the commencement of this suit, nor at any time afterwards, nor was Jos. E. Murrell. I do not know whether any other parties than those named were interested in the claim involved in this suit.

JNO. W. MURRELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 26th day of Oct., 1857, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

120 W. Sedley Johnson, of the city of Mobile, book-keeper, aged fifty-four years, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

First. To the first interrogatory he says: My name is W. Sedley Johnson; am 54 years of age; am a book-keeper; and reside in the city of Mobile.

Second. To the second interrogatory he says: I have known the libellants, Puig, Mir & Co., since 1852.

Third To the third interrogatory he says: I know that the ship James Guthrie has been laden several times in the lower bay of Mobile. The first time, to my knowledge, was in March, 1854. I never saw that ship.

Fourth. To the fourth interrogatory he says: I know that the ship James Guthrie was lying in the lower bay of Mobile on or about the 22d March, 1856. I do not know, of my own knowledge, where she belonged, nor who were her owners at that time; but I believe, from the correspondence between Joseph E. Murrell, (in whose house I am employed as book-keeper,) and Page & Allen, of Portsmouth, Va.,

that she belonged to that place and was owned by Page & Allen. Stephen Chase was her master.

121 Fifth. To the fifth interrogatory he says: The ship James Guthrie arrived in the lower bay of Mobile about the 25th January, 1856, and remained there until laden, and then sailed for Ferrol, Spain, about the 25 March, 1856, consigned to the order of Abarzuza Bro's, Cadiz.

Sixth. To the sixth interrogatory he says: I do not know if the ship James Guthrie received repairs in Mobile, but I do know that she was fitted out and supplied in Mobile for the said voyage to Ferrol.

I do not know of what the said supplies and fittings out consisted, except stevedore's bills for stowing the cargo, ship chandler's and other bills of supplies for the said voyage. I do not know what was the exact amount of the cost thereof.

Seventh. To the seventh interrogatory he says: I do not know what means, if any, the master had for defraying the cost of such outfitting. I know that he, Capt. Chase, provided means therefor by money advanced to him for that purpose by Joseph E. Murrell, of Mobile, consignee of the ship.

Eighth. To the eighth interrogatory he says: I know that the said master applied to Joseph E. Murrell, his consignee at Mobile, for a loan to defray such cost of outfitting and supplies on 22d

122 March, 1856, and that he, the said master, received on that day, from the said Joseph E. Murrell, four thousand dollars, ($4,000) for that purpose, against his, the said master's bill of the same date, at sixty days sight, upon Abarzuza Bro's, of Cadiz, as per his receipt, and on account of the freight of the ship James Guthrie. On the same 22d March, 1856, he, the said master, advised Abarzuza Bro's, of Cadiz, his consignees, that he had drawn on them for $4,000 for the disbursements of his said ship in Mobile, and against his said freight on the cargo from Mobile to Ferrol, which he ordered them to insure, or so much of his freight as would cover the amount of his bills upon them and expenses.

Ninth. To the ninth interrogatory he says: Puig, Mir & Co. did not advance money to said master, but they bought his said bill for $4,000 upon Abarzuza Bro's, of Cadiz, from Joseph E. Murrell, the consignee of the ship James Guthrie, at Mobile, drawn by him, Stephen Chase, against his freight, to enable him to defray the disbursements of his ship in Mobile; and considering the security of a captain's disbursement bill, drawn by him against his freight, to be ample, they endorsed and negotiated it in New Orleans. A disbursement bill, as before stated, was drawn by Stephen Chase, master of the ship James Guthrie, upon Abarzuza Bro's, of Cadiz, at 60 days sight, dated twenty-second of March, 1856, and the same

123 amount, $4,000, (the bill being taken by him at par,) was advanced him, the said master, by Joseph E. Murrell, the consignee of the ship at Mobile on the same 22d March, 1856, as per his receipt, for the purpose of enabling said master to defray his said ship's disbursements.

Tenth. To the tenth interrogatory he says: I have examined the paper marked A, attached to the commission. The signature of Stephen Chase, drawer, and that of Puig, Mir & Co., as first endorsers of said bill of exchange, or disbursement bill, original, attached to the annexed commission and marked A, are genuine. I know the handwriting of both the said parties and have seem them write. I do not know the signatures of the two other endorsers upon said bill. The said paper marked A is the disbursement bill or bill of exchange mentioned in the previous answers.

Eleventh. To the eleventh interrogatory he says: The above-mentioned disbursement bill or bill of exchange for $4,000, at sixty days sight, was drawn by Stephen Chase, as master of the ship James Guthrie, then lying in the lower bay of Mobile, upon Abarzuza Bro's, of Cadiz, Spain, consignees of said ship at that port, against the freight of said ship from Mobile to Ferrol, in consideration of
124 a loan of $4,000, made on the 22d March, 1856, on said Chase's disbursement bill for same amount, until the said bill could be sold or negotiated by Jos. E. Murrell for Captain Chase, on account of the ship James Guthrie and owners. Said bill for $4,000 was not taken in discharge and satisfaction of a lien on the ship for the advance, but as a collateral means of obtaining payment, for which said ship and owners are liable. Jos. E. Murrell, consignee of said ship at Mobile made said temporary loan of $4,000 to said master, to enable him to pay the disbursement bills of the ship James Guthrie at Mobile.

Twelfth. To the twelfth interrogatory he says: I do not know how much of the money obtained from Jos. E. Murrell by the said master was used by him in paying said ship's disbursement bills, as the said master himself paid them; but I know that the said master paid all the bills in Mobile against his ship before she sailed on said voyage to Ferrol, otherwise, any bills left unpaid by the said master would have been presented to the consignee, Joseph E. Murrell, as is customary; and judging from the amount of the stevedores', ship chandlery, and other bills paid by said master for the said disbursements of his ship, must have reached something very near $4,000.

125 Thirteenth, fourteenth. To the thirteenth and fourteenth interrogatories he says: All the papers, correspondence, &c., relating in any way to this matter, were forwarded to, and the same are in possession of, J. Angus Manning, esq., of New York, the attorney of the libellants in this case, by order of Puig, Mir & Co., of New Orleans.

Fifteenth. To the fifteenth interrogatory he says: I know that the said master wrote to the drawees of said bill for $4,000—Messrs. Abarzuza Bro's—advising them thereof; copy of which letter is as follows:

MOBILE, *22 de Marzo*, 1856.

JOS. ABARZUZA HERM'NOS, *Cadiz:*

Muy Sr'es mios: Despachado en esta dia la frigata Am'na de mi mando clamado James Guthrie cuyo cargan'to de crente once perchas

de acboladend y othos, muderos navales, esta destinado para el avenal del Ferrol, Pongo en conscun'to de y'rs que con el objeto de dejor cubiertos los decem bolsos croyadas per el citado barque duranta su permanencia en esta puerto he gorado con esta mismo fecha y No. 292 a la orden de los S'rs Puig, Mir & Co., de New Orleans, y a 60 d's sa 3d de cambio por valor de $4,000 lacual espero se serverance aceptor a quenta delimporta de mi flete quandando y'r para su
126 enguardo debidimenta autorizados per la presenta para aregurar per igual candidad de a aquel.

Y disimalonda la molestia tengo el guste de subscriberem.
Su of'mo. S. S. his m.
(Signed) STEPHEN CHASE.

P. S.—Al efectuar el anguro faculto el vs f'a que lo hagan per los $4,000, mas la deferencia que remitto del cambro gustos y comision.
(Signed) STEPHEN CHASE.

This letter was written and signed by Captain Chase on the 22d March, 1856, addressed to Abarzuza Bro's, of Cadiz, after the closeing of the northern mail of that day, and it was mailed on the morning of the 24th March, 1856, and sent as directed and requested by Capt. Chase, to insure its safe and early reception, enclosed in a letter of Jos. E. Murrell to the same parties, and dated 24th March, 1856.

Sixteenth. To the sixteenth interrogatory he says: I know that Jos. E. Murrell wrote to Abarzuza Bro's, of Cadiz, on the 24th March, informing them that Capt. Chase, of the ship James Guthrie, had drawn upon them as above, against his freight, and for the disbursements of his ship to their consignment; copy of said letter is in possession of J. Angus Manning, esq., of New York.

127 To the seventeenth interrogatory he says: I know that an answer to the letter above referred to was received by Jos. E. Murrell, dated Cadiz, May 10, 1856, written and signed by Abarzuza Bro's, of that place, in which they acknowledge having received Jos. E. Murrell's said letter of 24th of March, and the letter of Capt. Chase, of the 22d of March, enclosed therein, also informing Jos. E. Murrell, that Capt. Chase's said bill for $4,000 upon them had been protested for non-acceptance, as freight was not an insurable risk according to the laws of Spain, and that the risk was therefore uncovered.

Eighteenth. To the eighteenth interrogatory he says: I know nothing further.

First. To the first-cross interrogatory he says: I learned from Capt. Chase, and by reading all the correspondence between Jos. E. Murrell, of Mobile, in whose house I am the book-keeper, and of Page & Allen, of Portsmouth, Va., that the ship James Guthrie, about the 22d March, 1856, belonged to the latter firm; if there were any other owners at that time, I did not know it.

Second. To the second cross-interrogatory he says: Jos. E. Murrell, the consignee of the ship James Guthrie, at Mobile, did not pay that ship's disbursement bills here, in March, 1856. I
128 know that the principal bills against that ship, at Mobile, such as Wilson, the stevedore's, bill, $ ———, Destron & Major's, ship chandlers, $ ———, and others I have seen, were paid by the said master, Stephen Chase. If any of the said bills had been left by him unpaid when the James Guthrie sailed from Mobile, they would have been, as is customary, presented for payment to the consignee, Jos. E. Murrell.

Third. To the third cross-interrogatory he says: Being bookkeeper for Jos. E. Murrell, the consignee of the ship James Guthrie at the time referred to, and intimately acquainted with his business, I knew that Capt. Chase of that ship received, on the 22d March, 1856, from Jos. E. Murrell, the consignee, his check for $4,000, which check I saw handed to said Chase, who, in my presence signed a receipt for the same. I know further, that said check for $4,000 was duly paid on presentation, by the bank upon which it was drawn, and the amount of $4,000 so paid was charged by said bank in the ac. to Jos. E. Murrell. I heard Capt. Chase, master of the James Guthrie, say that he had no other means of defraying the ship's disbursement bills except by drawing against his freight as aforesaid.

129 Fourth. To the fourth cross-interrogatory he says: I was present at the application of the said master, S. Chase, of the ship James Guthrie, to Jos. E. Murrell, his consignee, for an advance of $4,000, to enable him to defray his ship's disbursements at Mobile. I was present at the assent of Joseph E. Murrell's assent thereto. I saw said master sign his said bill of exchange or disbursement bill of 22d March, 1856, at 60 d's sight upon Abarzuza Bro's. of Cadiz, for $4,000 against the freight of said ship. Handed Jos. E. Murrell's check for $4,000, so advanced to Capt. Chase, which said check I know was duly paid. I wrote out the receipt for the same, which I saw said master sign. At the request of said master, S. Chase, I wrote the said letter of advice to Abarzuza Bro's. of Cadiz, informing them that he had drawn on them at 60 d's for $4.000 against his freight, which he ordered them to have insured for an equal amount; which letter the said Chase signed after having had the same translated to him from Spanish into English.

Fifth. To the fifth cross-interrogatory he says: The libellants, Puig, Mir & Co., did not advance any money to said master, except by their buying from Jos. E. Murrell, his consignee, who advanced the amount temporarily to Capt. Chase—the said bill of exchange for $4,000 until it could be negotiated. I know, as above stated, that said master did receive from his consignee, Jos. E. Mus-
130 rell, on the 22d March, 1856, an advance of $4,000 by his J. E. M's check of that date for said amount, which check was duly paid. This was the only money advanced to said master by Jos. E. Murrell, his consignee. I did not see Capt. Chase pay any of the disbursement bills of the James Guthrie, at Mobile, but

know that the principal of said bills were paid by said master, and believe, from the reasons before stated, that he paid all the bills in Mobile against the ship James Guthrie before that vessel sailed from port; none of said bills having been presented to said consignee for payment.

Sixth. To the sixth cross-interrogatory he says: The consideration of the said bill of exchange was the $4,000 advanced to the said master of the James Guthrie, and the said $4,000 were temporarily advanced to him, as before stated, by his consignee, Jos. E. Murrell, for the express purpose, as declared by Capt. Chase, of enabling him to defray his said ship's disbursements in Mobile, and which the said master confirmed in his letter of 22d March, 1856, to Messrs. Abarzuza Bro's, of Cadiz, his consignees at said port, in which he advises them of his having drawn upon them as aforesaid, a copy of which letter I have given in my answer to the 15th direct interrogatory. I know that the said bill was taken as collateral security for obtaining payment of said advance for which said
131 ship James Guthrie and owners were liable, as customary, for the means furnished the master at his request and for the declared purpose of defraying the disbursements of his ship. Under any other circumstances the said consignee, Joseph E. Murrell, would not have taken the captain's said bill to negotiate for him. I was present at all of these conversations and agreements between the said master of the ship James Guthrie, and his consignee, Jos. E. Murrell.

Seventh. To the seventh cross-interrogatory he says: No money was advanced to the master of the James Guthrie by the libellants, Puig, Mir & Co.; as before stated, $4,000 were advanced to him by his consignee, Jos. E. Murrell, at the making of which advance I was present. I do not know what portion of said $4,000 was expended by said master in defraying his disbursements in Mobile, but I know that most of said bills were paid by said master for that purpose, and believe, for the reasons already stated, that said master paid all the disbursement bills of his ship at Mobile, before his said ship left port. I know nothing of the particulars of any repairs nor of the out-fittings and supplies provided by said master for the voyage.

Eighth. To the eighth cross-interrogatory he says: The
132 libellants, Puig, Mir & Co., reside in New Orleans. The said bill was sent to them by mail on the 23d March, 1856, to negotiate, not being able to negotiate it at Mobile, as per extract of Jos. E. Murrell's letter to Puig, Mir & Co. of that date, viz:

"El Capitan Chase ha girado a 60 d's a cargo los S'ors Abarzuza Henn'nos und litra pr $4,000 la misma que los incluzo fra que se servan negociata avis and once el discuento a que se efectuses la operacion."

The next day the 24th March, Joseph E. Murrell, drew upon said libellants, Puig, Mir & Co., at 30 d'y's sight for $4,000, the par amount of Capt. Chase's said bill upon Abarzuza Bro's, in order to give Puig, Mir & Co. ample time to effect negotiation of said bill,

which draft of Joseph E. Murrell upon Puig, Mir & Co., at 30 days, was duly paid by them at maturity, and for which amount of $4,000 they, Puig, Mir & Co., the libellants in this case, are still uncovered. Said libellants, Puig, Mir & Co., took said master's bill of $4,000 upon Abarzuza Bro's at par in the usual course of business. Any difference of exchange or commission for effecting said negotiation was to have been settled at a future period. No charge for negotiation or discount was made to Capt. Chase.

Ninth. To the ninth cross-interrogatory he says: The ship James Guthrie, when at Mobile in March, 1856, was under charter to Jos. E. Murrell to load a cargo of masts and naval timber for Ferrol, Spain, at the freight of 70 shillings sterling per load for masts,
133 and 60 shillings sterling per load for timber, &c., and 5 p. c. primage. The parties interested in said charter and in furnishing said cargo were Puig, Mir & Co., of New Orleans, and Jos. E. Murrell, of Mobile. The said Joseph E. Murrell, consignee of the ship James Guthrie at Mobile, did not transact any business for her ac., other than to advance to the said master, at his own request, $4,000 as aforesaid, to enable him to defray his ship's disbursements, the said captain prefering to pay the said ship's disbursement bills himself for convenience. The said consignee, Jos. E. Murrell, did not have charge of the disbursements of said ship while at Mobile. I do not know the whole amount of said disbursements, nor when they were made; but I do know that they were paid by said master for the reasons already given in previous answers. No commission was charged by Joseph E. Murrell for advancing the said $4,000 to Capt. Chase, the said master, but a commission of 5 p. c. as usual was paid by him, Capt. Chase, on the amount of his freight for the voyage to Ferrol, as per his charter-party. As Jos. E. Murrell did not pay the disbursement bills of the James Guthrie, I know nothing concerning them more than before stated.

Tenth. To the tenth cross-interrogatory he says: The ship James Guthrie sailed from Mobile bay about the 25th March, 1856,
134 for Ferrol, Spain, with a cargo of masts and naval timber, supplied by Jos. E. Murrell, and Puig, Mir & Co. The amount of her freight and primage for that voyage was £2,519 10 6. The James Guthrie was consigned to the order of Abarzuza Bro's, of Cadiz.

Eleventh. To the eleventh cross-interrogatory he says: The master of said ship wrote to Abarzuza Bros., of Cadiz, the drawees of the bill of exchange before mentioned, instructing them to insure the freight of said ship on such voyage to an amount equal to that of said bill of exchange and expenses, as per copy of said letter given by me in answer to the 15th direct interrogatory. Said master handed his said letter of advice to Abarzuza Bros. of 22d March, 1856, to Jos. E. Murrell, and requested him, Joseph E. Murrell, to send it forward to Spain, enclosed in Jos. E. Murrell's own letter to Abarzuza Bros., in order to insure its safe and prompt reception. These instructions of said master were complied with, and both letters were

mailed on the morning of the 24th March, 1856, to New York, to go per first steamer to Europe.

Twelfth. To the twelfth cross-interrogatory he says: Joseph E. Murrell and C. Judah Stewart had previously chartered the ship James Guthrie in New York, on the 19th October, 1854, to come to the lower bay of Mobile, and there load two successive
135 cargoes of masts and naval timber. The first of which cargoes was provided by said C. T. Stewart and his partner, John W. Murrell, on account of their contract with the French government, and the same was taken by said ship, James Guthrie, cleared at Mobile 25th January, 1855, to Toulon, France, consigned to B. Aubon, of that port. The second of the two cargoes was furnished by Jos. E. Murrell, on account of his contract for masts and naval timber with the Spanish government. The James Guthrie cleared at Mobile, on the second voyage, on 22d March, 1856, consigned to the order of Abarzuza Bros., of Cadiz. Upon the first voyage above referred to, the said master, Stephen Chase, drew upon B. Aubon, his consignee, at Toulon, for 19,610 francs, and negotiated the same through a banking house at Mobile against his freight on that voyage, which freight he ordered said consignee to insure to an equal amount, to enable him to pay his said ship's disbursements at Mobile, which bill was paid by said consignee at maturity. I here insert a copy of the said master's letter, as follows:

MOBILE, 27 *Janvier*, 1855.

Monsieur B. AUBON, *Toulon:*

Le navier James Guthrie sous men commandment affrite a New York par Mons. C. T. Stewart, pour charger a Mobile des natures et d'autres bois de construction navale pour Toulon, vient de com-
136 pleter son chargement a votre consignation et nettra a la vorle se le temps le permette apres demain, ayant besoin de fonds ici pour les debours de mon dit navire dans sur port j'ai tire sous vous aujourdhui c. 60 a la ordie de A. P. Woodruff pour frs. 19,610 que vuiller occueller apresentation a compter sous le fret du navire James Guthrie, que montera a pris de £2,000 sterling et je vous prie le faire courrer la prontant de ma dite frite sous vous par une assurance sur su fret de frs. 25,000 dont je M. Entendiare avec vous a mon arrive a Toulon, la cargason est assurée a Londres par Messrs. Stewart & Murrell de cette ville.

J'ai l'honneur de vous saluer,
(Signed) STEPHEN CHASE.

The James Guthrie arrived safely with her cargo at Toulon on that voyage. I do not know what amount was charged to and allowed by the said ship and owners for insurance on such freight, as the captain made his own settlement therefor with the consignee, B. Aubon, at Toulon, and it was never communicated to me. The insurance on said freight was effected in France, "sous l'honneur," freight not being a legally insurable risk by the laws of France.

Thirteenth. To the thirteenth cross-interrogatory he says: The

only letter that I know was addressed to the said master was
137 written to him by Joseph E. Murrell, under date of May 2, 1856, a copy of which is as follows:

MOBILE, *May* 2, 1826.

STEPHEN CHASE, Esqr.,
Captain of Ship James Guthrie, Key West:

DEAR SIR: I am in receipt of yours of 15 ulto. You inform me that your ship is badly injured and must be discharged, and that the expenses of discharging, taking the cargo out of water, and loading again, will be almost as much as it is worth; and you ask, if the spars, timber, &c., remain in the water whilst the ship is repairing, if they will not be eat up by worms, and you wish me to write what I think of it, and express the desire for me to make you suggestions. In reply, I have to state that, the matter being in your hands, and beyond my control, and at a distant port, even if I could make any suggestions, I cannot interfere.

Regretting your misfortune, and wishing you every success, I remain yours, truly,

(Signed) JOS. E. MURRELL.

Fourteenth. To the fourteenth cross-interrogatory he says: The letter of Capt. Chase, of 22 March, 1856, to Abarzuza Bros., of Cadiz, instructing to insure the freight of the James Guthrie,
138 was mailed on the morning of the 24th March, 1856, enclosed, by said master's own request, in a letter of Jos. E. Murrell, of same date to same parties, which letter of Jos. E. Murrell, enclosing the said letter of advice of Capt. Chase, was addressed to the care of B. Mitgans & Co., of Paris, urging them to forward it promptly to its destination, Cadiz, as per copy, as follows:

MOBILE, 24 *de Marzo*, 1856.

S'rs B. MITGANS & Ca., *Paris:*

MUY S'RES MIOS: La adjunta para los S'res Abarzuza Herm'nos, de Cadiz, intereser que llmque cuante antes a su titulo mas encerrada una pa. sit'ro comme amigo el S'r Mir & C.

(Signed) JOS. E. MURRELL.

The letter of Capt. Chase, of the 22 March, 1856, referred to, was carried to Europe by the same steamer from New York that would have conveyed it had it been mailed at Mobile on the 23d instead of the 24th March, and it could not have been conveyed by any earlier conveyance to Europe, as letters for Spain must be forwarded, if per steamer, through England or France. Capt. Chase requested Joseph E. Murrell to enclose his letter of advice in the letter which Jos. E. Murrell told him he was himself writing to Abarzuza Brothers, of Cadiz, to go by the first steamer for England. Captain Chase
139 could have mailed his said letter of the 22d March, 1856, him-

mailed on the morning of the 24th March, 1856, to New York, to go per first steamer to Europe.

Twelfth. To the twelfth cross-interrogatory he says: Joseph E. Murrell and C. Judah Stewart had previously chartered the ship James Guthrie in New York, on the 19th October, 1854, to come to the lower bay of Mobile, and there load two successive
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J'ai l'honneur de vous saluer,

(Signed) STEPHEN CHASE.

The James Guthrie arrived safely with her cargo at Toulon on that voyage. I do not know what amount was charged to and allowed by the said ship and owners for insurance on such freight, as the captain made his own settlement therefor with the consignee, B. Aubon, at Toulon, and it was never communicated to me. The insurance on said freight was effected in France, "sous l'honneur," freight not being a legally insurable risk by the laws of France.

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Captain of Ship James Guthrie, Key West:

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Regretting your misfortune, and wishing you every success, I remain yours, truly,

(Signed) JOS. E. MURRELL.

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MOBILE, 24 *de Marzo*, 1856.

S'rs B. MITGANS & Ca., *Paris:*

MUY S'RES MIOS: La adjunta para los S'res Abarzuza Herm'nos, de Cadiz, intereser que llmque cuante antes a su titulo mas encerrada una pa. sit'ro comme amigo el S'r Mir & C.

(Signed) JOS. E. MURRELL.

The letter of Capt. Chase, of the 22 March, 1856, referred to, was carried to Europe by the same steamer from New York that would have conveyed it had it been mailed at Mobile on the 23d instead of the 24th March, and it could not have been conveyed by any earlier conveyance to Europe, as letters for Spain must be forwarded, if per steamer, through England or France. Capt. Chase requested Joseph E. Murrell to enclose his letter of advice in the letter which Jos. E. Murrell told him he was himself writing to Abarzuza Brothers, of Cadiz, to go by the first steamer for England. Captain Chase
139 could have mailed his said letter of the 22d March, 1856, him-

self on the 23, next day, had he not preferred, as he said, for it to go in Jos. E. Murrell's letter of the 24 March, 1856.

Fifteenth. To the fifteenth cross-interrogatory he says: The libellants, Puig, Mir & Co., were not interested in the charter of the James Guthrie, for Ferrol, further than that said ship, under that charter, took the cargo for Ferrol, in which they were interested to the extent of two-fifths, Jos. E. Murrell being interested for three-fifths in the same cargo.

Sixteenth. To the sixteenth cross-interrogatory he says: I do not know whether any other parties than those named were interested in the claim involved in this suit, or in the bill of exchange before mentioned, but I do know, as bookkeeper for Jos. E. Murrell and John W. Murrell, that neither of those gentlemen were in any way interested at the time of this suit, nor at any time afterwards.

W. SEDLEY JOHNSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 27th day of Oct., 1857, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

140 (Copy.)

Depositions of Jos. E. Murrell, John W. Murrell, and W. Sedley Johnson, taken under commission, at Mobile, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

Filed 9 Nov., 1857.

141 District court of the United States, southern district of New York.

Interrogatories to be administered to Charles Walsh, Newton St. John, Charles D. Dickey, Henry V. H. Voorhies, Daniel Wheeler, William Denver, George S. Wilson, John W. Murrell, Joseph E. Murrell, A. Perez, and William Sedley Johnson, witnesses to be produced and sworn and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the district court of the United States, in and for the southern district of New York, wherein Magin Puig, Ramon Mir, Juan Batista Soulere, are libellants, against the ship James Guthrie, her tackle, &c., and James W. Phillips is claimant, on the part and behalf of the libellants, before the commissioner or commissioners, in the writ hereto annexed named.

1. What is your name, age, occupation, and place of residence?

2. Was there in March, 1856, any custom existing at Mobile and its vicinity in reference to liens upon vessels for the payment of disbursement bills drawn by the masters of such vessels, or for
142 the payment of advances of money made on such bills? If yea, state what such custom was, where it prevailed, how long it

had existed, whether it still exists, to what extent it was deemed binding, and whether such custom was uniniform, or how otherwise.

3. Do you know whether or not any disbursements were required for fitting the ship James Guthrie for her voyage from Mobile to Cadiz or Ferrol, on which she sailed in March, 1856? If yea, state what the matters and things were which required such disbursements, and the expense and amount thereof, and whether or not such disbursements were necessary.

4. Do you know whether or not the master of said ship then had means to defray such disbursements? If yea, state whether he had such means, and what the said means were, and the amount thereof; and also state whether such means were sufficient to disburse said vessel for said voyage, and, if not sufficient, then state what further sum was required for that purpose.

5. Do you know whether or not said master did in fact disburse said vessel for said voyage? If yea, state how, and for what, and to what amount he did so disburse her, and whether such disbursements were necessary.

143 6. Do you know whether or not the libellants advanced money to said master to defray said disbursements? If yea, state what you know on that subject, and answer fully, when, how, and under what circumstances the advance was made, what was the state of the said bill previous to said advances, when and how said bill was negotiated, and with what intent and design, when the same was filled up and first delivered or issued, and all other matters concerning the same within your knowledge.

7. Have you any correspondence, or copies of correspondence, touching the matters above inquired about, or touching the disbursement bill drawn by Stephen Chase, master, on Abarzuza Brothers, of Cadiz, dated March 22d, 1856, for $4.000, at sixty days' sight, or touching the liens and claims of the libellants on said vessel, or touching the negotiation of said bill, or the subsequent proceedings in relation thereto? If yea, produce and annex to your deposition such correspondence and copies.

8. Do you know any other matter or thing which may benefit the libellants in this suit? If yea, state the same, fully and particularly.

J. ANGUS MANNING,
Proctor for Libellants.
J. BUTLER WRIGHT,
Advocate for Libellants.

144 Endorsed: United States district ct., southern district of N. Y. In admiralty. Magin Puig and others *vs.* The ship James Guthrie, her tackle, &c., James W. Phillips, claimant. Interrogatories for second commission. J. A. Manning, proctor for libellants.

Settled by consent, but subject to all legal exceptions.
BUTLER, EVARTS & SOUTHMAYD,
Proctors for Cl'm'ts.

145 In the district court of the United States for the southern district of New York.

Cross-interrogatories to be administered on the part of James W. Phillips to Charles Walsh, Newton St. John, Charles D. Dickey, Henry V. H. Voorhies, Daniel Wheeler, William Denver, George S. Wilson, John W. Murrell, Joseph E. Murrell, A. Peres, and William Sedley Johnson, witnesses to be examined on the part of the libellants, in a suit pending in this court in favor Magin Puig, Ramon Mir, and Juan Batiste Soulere, libellants, against the ship James Guthrie, her tackle, &c., James W. Phillips, claimant thereof.

First cross-interrogatory. If, in answer to the second direct interrogatory, you shall have undertaken to state the existence at Mobile or its vicinity of any custom in reference to liens upon vessels for the payment of disbursement bills drawn by the master of such vessel, or for the payment of advances of money made on such bills, please state in full detail upon what particular personal knowledge of your own your statement of such custom is founded, and what particular instances or occurrences have brought to your knowledge the
146 existence of such custom, and what were the particular circumstances of each such case. Is such custom founded upon any statute law of the State of Alabama; and if so, what? Is it founded upon or supported by any judicial decision or decisions; and if so, what, in particular, and how do you know of the same? Is it founded upon, or does it exist independently of, the general admiralty law prevailing in the United States? Is your statement of the existence of such custom anything more than a statement of your opinion, or your understanding of the opinion of some other person or persons as to the rule of law upon this subject? What is your business pursuit, and what have been your opportunities for knowing the rule upon this subject of liens upon vessels for disbursement bills? Do you undertake to say that, by any custom or law existing at Mobile, a lien exists upon a vessel in favor of all successive holders of a bill of exchange drawn to raise funds to pay the disbursements of a vessel, where such bill is drawn upon the consignee against freight, with instructions to insure such freight, and the bill is sold and negotiated in the market without any expressed contract in respect of a lien on the vessel; if you do, in what particular
147 cases have you known such lien, under such circumstances, asserted and maintained in law? Does such lien exist in the absence of any agreement in regard to it, and irrespective of the question whether the credit of the master or agent of the ship, with the freight, accompanied by insurance of it, is or is not sufficient to procure the needed funds without the creation of a lien on the vessel? If you say it does, what enables you to say so? In what instances of that kind have you known such a lien asserted and sustained by law?

Second cross interrogatory. If, in answer to the third direct interrogatory, you state that any disbursements were required for fitting the ship James Guthrie for the voyage in the said interrogatory

mentioned, or the expense, or amount, or necessity thereof, state your means of knowledge on the subject. Were you ever on board the said ship? How do you know what supplies she had, what she needed, and what she received?

Third cross-interrogatory. If, in answer to the fourth direct interrogatory, you undertake to say whether or not the master had means to defray the disbursements of said ship; what his means were; whether or not they were sufficient, and what further sum was
148 requisite; state your means of knowledge upon all such points.

Fourth cross-interrogatory. State your means of knowledge in respect of any answer you may have given to the fifth direct interrogatory.

Fifth cross-interrogatory. If, in answer to the sixth direct interrogatory, you undertake to say that the libellants, Puig, Mir & Co., advanced money to the master to defray the disbursements of said ship, state how you know that to be the fact? Where was such advance made? Where did Puig, Mir & Co. reside? Did the master ever see them? And if so, when and where?

Was it not the fact that whatever advance was obtained by the master, to enable him to pay his disbursements, was made in Mobile by one Murrell? Had not the master paid his disbursements, or was he not in funds to pay the same by means of such advance obtained from said Murrell, or in some way before Puig, Mir & Co. made any advance or payment in the matter?

Did not Puig, Mir & Co. purchase the bill of Captain Chase upon Abarzuza Brothers, of Cadiz, for four thousand dollars at sixty days' sight, drawn upon them as consignees of the vessel against her freight, with instructions to them as consignees to insure
149 such freight to an amount sufficient to cover said bill? Was not such payment or advance, as Puig, Mir & Co. made in the matter, a payment of four thousand dollars or thereabouts, as the price of the bill of exchange which they so purchased. How and when, and to whom did Puig, Mir & Co. part with or pay such four thousand dollars? If you say it was not a payment of the price of said bill of exchange upon purchase thereof, how do you know this to be so?

Sixth cross-interrogatory: Do you know whether or not Puig, Mir & Co. negotiated or parted with the bill upon Cadiz for four thousand dollars mentioned in the last preceding cross-interrogatory? If so, when and to whom did they sell or negotiate the same? How, when, and where did Puig, Mir & Co. again become possessed of said bill? From whom did they take it up or receive it after its protest for non-acceptance? Was not said bill, after its protest for non-acceptance, taken up by Abarzuza Brothers, the drawees thereof, for the honor of the drawers or endorsers, or in some way? Was it not in some way paid or taken up by some one in Cadiz? And by whom, and under what circumstances?

150 Seventh cross-interrogatory. If, in answer to the seventh direct interrogatory, you produce and annex to your deposition any papers purporting to be original letters, please state how

you know them to genuine? If you so produce and annex any papers, purporting to be copies of letters, state how you knew them to be copies of genuine originals; by whom the copies were made, and where are the originals.

Endorsed: United States district court, southern district of New York. In admiralty. The ship James Guthrie, her tackle, &c. James W. Phillips, claimants, *ads.* Magin Puig and others. Cross-interrogatories for second commission. Butler, Evarts, and Southmayd, proctors. Jno. A. Manning, esq., proctor for lib'lts.

Settled by consent, but subject to all legal exceptions.

J. A. MANNING,
Proctor for Lib'ts.

151 United States district court, southern district of New York.—In admiralty.

MAGIN PUIG and others
vs.
THE SHIP JAMES GUTHRIE, &c., JAMES W. PHILLIPS, claimant.

It is stipulated that the order for commission be modified so as that it may be executed by the persons named therein as commissioners, or any one of them, provided that Peter Hamilton, named as commissioner on behalf of the claimant, shall have reasonable notice (say three days) of the time and place of execution of the commission, and have liberty to attend if he choose.

If Mr. Hamilton be absent from Mobile, the notice may be left at his office.

BUTLER, EVARTS & SOUTHMAYD,
Claimants for Proctors.

Jan'y 17, 1859.

152 U. S. district court, southern district of New York.—In admiralty.

RAMON PUIG and others
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c., JAMES W. PHILLIPS, claimant.

We consent that George W. Boyd, jun'r, of the firm of S. Merchant & Co., of Mobile, in the place of William Denvir, deceased, late of said firm, and also A. J. Ingersoll, of the firm of H. O. Brewer & Co., of said Mobile, may be examined as witnesses, and their depositions taken under the commission heretofore issued and directed in this cause to Richard B. Owen, Peter Hamilton, and Louis Lude, esq'rs, all of said Mobile.

Dated New York, Feb'y 7, 1859.

BUTLER, EVARTS & SOUTHMAYD,
Claimant's Proctors.

153 Deposition of witnesses produced, sworn, and examined on the seventh day of February to the 2d day of March, inclusive, in the year one thousand eight hundred and fifty-nine, under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue between Magin Puig *et al.*, libellants, and the ship James Guthrie; her tackle, &c., respondents, as follows:

George S. Wilson, of Mobile, Ala; occupation, stevedore; aged 36 years; being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

First. To the first interrogatory he says: My name is George S. Wilson; occupation, stevedore; am aged 36th years, and reside in Mobile.

Second. To the second interrogatory he says: I am not sufficiently informed of the mercantile usages of this port to be able to say whether such a custom exists here as the one inquired about or not. I know that material men, that is, persons furnishing supplies, materials, &c., to a vessel, have a lien here as elsewhere upon the vessel for the amount of their claims for such supplies, &c.;
154 whether or not such lien accompanies disbursement bills, drawn by the masters of such vessels, or for the payment of advances of money made on such bills, I cannot say.

Third. To the third interrogatory he says: Disbursements were necessary for fitting the ship James Guthrie for her voyage from Mobile to Cadiz or Ferrol, on which he sailed in March, 1856. I, as stevedore, loaded her, but as to what other disbursements she required, I did not inquire into, and consequently don't know. I presume she needed the supplies which vessels sailing on a voyage usually required. I know that that portion of her disbursements which was paid to me for loading her was necessary. The amount so paid me was somewhere about seven hundred or eight hundred dollars. I cannot be more accurate as to the amount in consequence of having lost the memorandum book in which it is set down.

Fourth. To the fourth interrogatory he says: I should think the master of said vessel had not means sufficient to disburse his vessel without drawing—as this is the usual way in which they obtain the money to pay their disbursements—that is, either by drafts on their owners, or by drafts against their freight. I cannot answer the various clauses of this interrogatory more fully than I have done.

155 To the fifth interrogatory he says: I can only say that I know he paid me for loading the vessel, and that this disbursement was necessary. I think the money he paid me was a portion of the amount obtained by me, by the negotiation of a draft against his freight.

Sixth. To the sixth interrogatory he says: I do not know whether the libellants advanced money to said master to defray his disbursements.

you know them to genuine? If you so produce and annex any papers, purporting to be copies of letters, state how you knew them to be copies of genuine originals; by whom the copies were made, and where are the originals.

Endorsed: United States district court, southern district of New York. In admiralty. The ship James Guthrie, her tackle, &c. James W. Phillips, claimants, *ads.* Magin Puig and others. Cross-interrogatories for second commission. Butler, Evarts, and Southmayd, proctors. Jno. A. Manning, esq., proctor for lib'lts.

Settled by consent, but subject to all legal exceptions.

J. A. MANNING,
Proctor for Lib'ts.

151 United States district court, southern district of New York.—In admiralty.

MAGIN PUIG and others
vs.
THE SHIP JAMES GUTHRIE, &c., JAMES W. PHILLIPS, claimant.

It is stipulated that the order for commission be modified so as that it may be executed by the persons named therein as commissioners, or any one of them, provided that Peter Hamilton, named as commissioner on behalf of the claimant, shall have reasonable notice (say three days) of the time and place of execution of the commission, and have liberty to attend if he choose.

If Mr. Hamilton be absent from Mobile, the notice may be left at his office.

BUTLER, EVARTS & SOUTHMAYD,
Claimants for Proctors.

Jan'y 17, 1859.

152 U. S. district court, southern district of New York.—In admiralty.

RAMON PUIG and others
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c., JAMES W. PHILLIPS, claimant.

We consent that George W. Boyd, jun'r, of the firm of S. Merchant & Co., of Mobile, in the place of William Denvir, deceased, late of said firm, and also A. J. Ingersoll, of the firm of H. O. Brewer & Co., of said Mobile, may be examined as witnesses, and their depositions taken under the commission heretofore issued and directed in this cause to Richard B. Owen, Peter Hamilton, and Louis Lude, esq'rs, all of said Mobile.

Dated New York, Feb'y 7, 1859.

BUTLER, EVARTS & SOUTHMAYD,
Claimant's Proctors.

153 Deposition of witnesses produced, sworn, and examined on the seventh day of February to the 2d day of March, inclusive, in the year one thousand eight hundred and fifty-nine, under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein depending and at issue between Magin Puig *et al.*, libellants, and the ship James Guthrie; her tackle, &c., respondents, as follows:

George S. Wilson, of Mobile, Ala; occupation, stevedore; aged 36 years; being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

First. To the first interrogatory he says: My name is George S. Wilson; occupation, stevedore; am aged 36th years, and reside in Mobile.

Second. To the second interrogatory he says: I am not sufficiently informed of the mercantile usages of this port to be able to say whether such a custom exists here as the one inquired about or not. I know that material men, that is, persons furnishing supplies, materials, &c., to a vessel, have a lien here as elsewhere upon the vessel for the amount of their claims for such supplies, &c.;

154 whether or not such lien accompanies disbursement bills, drawn by the masters of such vessels, or for the payment of advances of money made on such bills, I cannot say.

Third. To the third interrogatory he says: Disbursements were necessary for fitting the ship James Guthrie for her voyage from Mobile to Cadiz or Ferrol, on which he sailed in March, 1856. I, as stevedore, loaded her, but as to what other disbursements she required, I did not inquire into, and consequently don't know. I presume she needed the supplies which vessels sailing on a voyage usually required. I know that that portion of her disbursements which was paid to me for loading her was necessary. The amount so paid me was somewhere about seven hundred or eight hundred dollars. I cannot be more accurate as to the amount in consequence of having lost the memorandum book in which it is set down.

Fourth. To the fourth interrogatory he says: I should think the master of said vessel had not means sufficient to disburse his vessel without drawing—as this is the usual way in which they obtain the money to pay their disbursements—that is, either by drafts on their owners, or by drafts against their freight. I cannot answer the various clauses of this interrogatory more fully than I have done.

155 To the fifth interrogatory he says: I can only say that I know he paid me for loading the vessel, and that this disbursement was necessary. I think the money he paid me was a portion of the amount obtained by me, by the negotiation of a draft against his freight.

Sixth. To the sixth interrogatory he says: I do not know whether the libellants advanced money to said master to defray his disbursements.

Seventh. To the seventh interrogatory he says: I have no such correspondence or copies.

Eighth. To the eighth interrogatory he says: I know nothing more than I have stated.

First. To the first cross-interrogatory he says: I have not said that I know of the existence here of such a custom.

Second. To the second cross-interrogatory he says: I loaded the ship for the voyage inquired of in the 3d direct interrogatory, and was paid for so doing. This payment to me was a necessary disbursement. I did not inform myself as to what others she required. I was frequently on board of the vessel whilst she was preparing for her voyage.

156 Third. To the third cross-interrogatory he says: I answered that I did not think he had means sufficient; and my reason for thinking so is, that masters of vessels do not usually come provided with the means in cash to pay their disbursements whilst in port, but raise the same by drafts on their owners or against their freight.

Fourth. To the fourth cross-interrogatory he says: I know of my own knowledge that he paid me, and my reason for thinking the money which he paid me was a part of that obtained by negotiations of his drafts, is because this is the usual way in which masters of vessels obtain money for their disbursements on the ship's account.

Fifth. To the fifth cross-interrogatory he says: I have not so stated.

Sixth. To the sixth cross-interrogatory he says: I know nothing of the matters herein inquired of.

Seventh. To the seventh cross-interrogatory he says: I have not annexed any papers, and do not know of the existence of any.

GEO. L. WILSON.

157 Examination taken, reduced to writing, and by the witness subscribed and sworn to this 7th February, 1859, before—

R. B OWEN,
LEWIS S. LUDE,
Comm'rs.

Charles D. Dickey, of Mobile, Ala., merchant, aged 40 years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say, as follows:

First. To the first interrogatory he says: My name is Charles D. Dickey; aged 40 years; occupation, that of merchant; and my residence is Mobile.

Second. To the second interrogatory he says: I certainly think there was a custom in Mobile, at the time inquired of, of the character indicated by this interrogatory. The custom was, that the purchaser of a disbursement bill had a lien upon the vessel for all moneys so advanced for her disbursements. Said custom prevails universally, and has existed during my experience in business. It still exists. It was deemed binding to the extent of the vessel's disbursements. I have considered it to be uniform.

158 Third. To the third interrogatory he says: I know not.

Fourth. To the fourth interrogatory he says: I know not.

Fifth. To the fifth interrogatory he says: I know not.

Sixth. To the sixth interrogatory he says: I know not.

Seventh. To the seventh interrogatory he says: I know not.

Eighth. To the eighth interrogatory he says: I know nothing more than I have stated.

First. To the first cross-interrogatory he says: The information upon which I have based my answer to the second direct interrogatory is derived from my experience in managing an exchange business. I cannot now undertake to state all the particular instances or occurrences which have brought to my knowledge the existence of the custom, but it has been my understanding that the purchaser of a disbursement bill did have such a lien upon the vessel, both by law and custom, ever since my connexion with the business which I have managed and conducted. I cannot state whether or not it is founded upon any law of the State of Alabama or of the United States. My statement of the existence of this custom is the statement of
159 my own opinion, that opinion being the result of my observation and experience in business. My business is chiefly purchasing sterling exchange, and my opportunities have been frequent for knowing the custom upon this subject by inquiry and otherwise. I do undertake to say that the custom exists in Mobile, as set forth and described in this interrogatory, but cannot indertake to cite particular cases. Such a lien does exist in the absence of any agreement on the subject. Such has been my understanding of the custom and law, but I can give no particular instance in which it has been asserted.

Second. To the second cross-interrogatory he says: I did not state that any disbursements were required. I know nothing of the matters inquired of.

Third. To the third cross-interrogatory he says: I know nothing.

Fourth. To the fourth cross-interrogatory he says: I gave no answer to the fifth direct interrogatory.

Fifth. To the fifth cross-interrogatory he says: I did not so state.

Sixth. To the sixth cross-interrogatory he says: I know nothing of the matters herein inquired about.

Seventh. To the seventh cross-interrogatory he says: I have
160 produced and annexed no such papers.

CHAS. D. DICKEY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 8th day of February, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

George W. Boyd, jr., of Mobile, Ala., merchant, aged about 38 years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say, as follows:

First. To the first interrogatory he says: My name is George W. Boyd, jr.; age, 38 years; occupation, that of a merchant; engaged in the ship chandlery business; and my residence is Mobile, Ala.

Second. To the second interrogatory he says: There was, at the time inquired of, in Mobile, and still is, the custom of the nature herein indicated. The custom is, that when the master of a vessel draws on his owners to the extent of his disbursements, which draft is negotiated, then the purchaser of the draft has a lien upon
161 the vessel for the money so advanced by him. It has always, so far as I know, prevailed in Mobile; and our firm has, since our connexion with it, considered that it existed. It is binding to the extent of the draft, and in Mobile it is universally and uniformly recognized by merchants.

Third. To the third interrogatory he says: There was money required for the disbursement of the James Guthrie when she sailed on the voyage herein indicated. The matters and things which required such disbursements were pilotage, water, stevedores, store bill, and the usual supplies which a ship requires for a voyage and whilst in port. I do not know the amount of the disbursements. They were necessary.

Fourth. To the fourth interrogatory he says: I know that the master of said vessel paid our firm the account he had with us, say about $1,200; whence he obtained the means to do so I do not know. I can state nothing more in answer to this interrogatory.

Fifth. To the fifth interrogatory he says: I know he paid our account, and presume he paid others. The disbursements were necessary, but I could not say to what they amounted.

162 Sixth. To the sixth interrogatory he says: I don't know.

Seventh. To the seventh interrogatory he says: I have no such correspondence or copies thereof.

Eighth. To the eighth interrogatory he says: I know nothing further.

First. To the first cross-interrogatory he says: I am one of the firm who are engaged in the ship chandlery business, and our daily transactions for many years have informed me of the existence of such a custom. I cannot undertake to cite particular cases, but have always understood that the purchaser of a disbursement bill had a lien upon the vessel in the event of the non-payment of the bill. We have never had occasion to test the question by proceedings at law. I cannot speak as to what law it is founded upon, but speak of my knowledge of the understanding which prevails among business men. My business is that of a ship chandler, and my opportunities of knowing of the custom have been good and frequent. My understanding of the custom, as it prevails in Mobile, is, that each successive holder of a disbursement bill drawn by the captain of a vessel on his owner or his consignees, to raise money to pay his
163 ship's disbursements, has a lien upon the vessel, being subrogated to the rights of the men who furnished the supplies, &c. I know of no cases in which the question has been raised and tested. The lien, according to our understanding and the custom with us, ex-

ists in the absence of any agreement whatever. My knowledge of the understanding which exists among merchants in Mobile enables me to say as I said before. I know of no trial at law in which the question has been raised.

Second. To the second cross-interrogatory he says: I never was on board the said ship, but I know she required provisions whilst here, and for her voyage, and that she required also the services of a stevedore to load her. I cannot speak as to what supplies she had except those furnished by us; the bill for these amounted to about $1,200.

Third. To the third cross-interrogatory he says: I have only stated in that answer that he paid us our account; but whence he derived the means I know not.

Fourth. To the fourth cross-interrogatory he says: For answer to this I refer to my answer to the fifth direct interrogatory.

164 Fifth. To the fifth cross-interrogatory he says: I know nothing of this.

Sixth. To the sixth cross-interrogatory he says: I know nothing of the matters herein inquired about.

Seventh. To the seventh cross-interrogatory he says: I have produced and annexed no such letters.

GEO. W. BOYD, JR.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 8th day of February, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

165 Daniel Wheeler, of Mobile, Ala., merchant, aged about ——— years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

First. To the first interrogatory he says: My name is Daniel Wheeler: my age, about 54 years; my occupation, that of a merchant; and place of residence, Mobile.

Second. To the second interrogatory he says: So far as American vessels are concerned, I do not know whether such a custom existed in Mobile at that time or not; but in relation to British vessels, it is my opinion that a custom of the kind indicated did prevail here. In relation to British vessels, it has always been my opinion that a disbursement bill had a lien upon the ship as long as she sailed, without regard to the number of hands through which it passed. I cannot state whether such custom was uniform or not.

Third. To the third interrogatory he says: Of my own knowledge I know nothing of the matters herein inquired about.

Fourth. To the fourth interrogatory he says: I know not.

166 Fifth. To the fifth interrogatory he says: I know not.

Sixth. To the sixth interrogatory he says: I know not.

Seventh. To the seventh interrogatory he says: I have no knowledge of any correspondence.

Eighth. To the eighth interrogatory he says: I know nothing in the matter at all.

First. To the first cross-interrogatory he says: The information upon which I base my answer to the second direct interrogatory is derived from my experience as a merchant, to whom, for many years, British vessels have been consigned at this port, and also from the facts of a particular case which passed through my hands. The particulars of this case are as follows: A British vessel came consigned to me, and whilst here, a disbursement bill against her for previous disbursements was sent me for collection. I consulted in relation to the matter the Hon. John A. Campbell, then a practicing lawyer here, but now an associate justice of the Supreme Court of the United States, and his opinion being that the holder of the bill had a lien on the vessel, I waited upon the master, who was also a part
167 owner, and having informed him of the opinion given me, he adjusted the claim. The debt, in this case, though against a British vessel, was an American debt—a debt due to an American citizen.

I have not examined the laws upon the subject, and cannot state upon what law such custom is based. My statement of the existence of the custom is based upon my experience in business. My business is that of a merchant, and I have a large experience in disbursement bills. I merely give my opinion, that where a bill shows upon its face and can be proved to be for the necessary disbursements of a ship, the holder of such bill has a lien upon the ship for its payment; and this opinion is based upon my observation and experience in such matters. I have already cited a case in which such claim was asserted and yielded to.

I think no agreement is necessary to establish the lien; the captain's signature is a signification that he received the money on the ship's account.

Second. To the second cross-interrogatory he says: I have not so stated.

Third. To the third cross-interrogatory he says: I have not stated so, and have nothing to say.

168 Fourth. To the fourth cross-interrogatory he says: I answered nothing to the fifth int'y.

Fifth. To the fifth cross-interrogatory he says: I did not so answer

Sixth. To the sixth cross-interrogatory he says: I have no knowledge of the transaction.

Seventh. To the seventh cross-interrogatory he says: I have not produced or annexed any such papers.

DANIEL WHEELER.

Examination taken, and reduced to writing, and by the witness subscribed and sworn to this 8th day of February, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

Charles Walsh, of Mobile, Ala., aged ——— years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, doth depose and say as follows:

First. To the first interrogatory he says: My name is Charles Walsh; age, 45 years; commission merchant; and place of residence, Mobile.

169 Second. To the second interrogatory he says: There was such custom in Mobile at the time mentioned, and both before and since. My idea of the custom has always been, that a bill drawn by the captain of a vessel on his owners, or against his freight, to raise money for the necessary disbursements of his ship, such as wages of the crew, repairs, supplies, &c., carried with it a lien upon the vessel, and that such lien accompanied the bill in all the successive hands through which it passed. As a director of the Bank of Mobile, I have often purchased such bills for the said bank, and always with the understanding that they carried a lien upon the vessel by whose master they were drawn. It is deemed binding to the extent of the disbursements of the ship. Said custom has been uniform.

Third. To the third interrogatory he says: I do not know.

Fourth. To the fourth interrogatory he says: I do not know.

Fifth. To the fifth interrogatory he says: I do not know.

Sixth. To the sixth interrogatory he says: I do not know.

Seventh. To the seventh interrogatory he says: I have no such correspondence, or copies thereof.

170 Eighth. To the eighth interrogatory he says: I know nothing further than I have stated.

First. To the first cross-interrogatory he says: The information upon which I base my answer to the second direct interrogatory is the general understanding of merchants in Mobile, so far as I have been able to get at the same, but I cannot now undertake to give the various and particular instances or occurrences which have brought the existence of the custom to my knowledge.

I have never examined the laws upon the subject, and cannot say upon what law it is founded; can only say it is the custom.

My statement of the existence of the custom is based upon the general understanding of business men in Mobile. My business pursuit is, as I have said, that of a commission merchant, but our firm also deals in exchange, and I have also several times been acting president of the Bank of Mobile, and my opportunities for knowing the rule upon this subject have been frequent and good.

I should state, that by the custom here a lien exists upon a vessel in favor of all the successive holders of a bill of exchange drawn to raise funds to pay the disbursements of a vessel, as stated in

171 this interrogatory, but I cannot cite particular cases; can only say, it is the general understanding. No agreement in regard to it is necessary, for no captain could sell his bill, unless it were the recognized understanding that such bill carried with it a lien upon the vessel.

No bill-buyer would run the risk of the trouble to which he might be put in the absence of such security.

Second. To the second cross-interrogatory he says: I have not so stated.

Third. To the third cross-interrogatory he says: I did not say so.

Fourth. To the fourth cross-interrogatory he says: I made no answer to that int.

Fifth. To the fifth cross-interrogatory he says: I did not so state.

Sixth. To the sixth cross-interrogatory he says: I do not know.

Seventh. To the seventh cross-interrogatory he says: I have produced and annexed no such papers.

CHAS. WALSH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 9th day of February, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

172 Henry V. H. Voohees, of Mobile, Ala., merchant, aged 55 years, being duly and publicly sworn pursuant to the directions hereto annexed, doth depose and say as follows:

First. To the first interrogatory he says: My name is H. V. H. Voohees; my age, 55 years; my occupation, merchant; and place of residence, Mobile, Ala.

Second. To the second interrogatory he says: Such a custom did, at the time inquired of, and before and since, exist at Mobile and in its vicinity. The custom was and is, to consider that when the master of a vessel has drawn a bill, either upon his owners or against his freight, in order to raise funds with which to meet the disbursements (expenses) of his ship, and such bill is sold or negotiated by him, it carries with it a lien upon the ship. Said custom has prevailed here, in Mobile, ever since I became acquainted with the business of the place, and still exists. It is deemed binding to the extent of the disbursements of the ship, and is uniform.

Third. To the third interrogatory he says: I don't know.

173 Fourth. To the fourth interrogatory he says: I don't know.

Fifth. To the fifth interrogatory he says: I don't know.

Sixth. To the sixth interrogatory he says: I know nothing of this.

Seventh. To the seventh interrogatory he says: I have no such correspondence or copies thereof.

Eighth. To the eighth interrogatory he says: I know nothing more than I have stated.

First. To the first cross-interrogatory he says: My statement of the existence of the custom is based upon my personal knowledge of the understanding which obtains, without exception, I think, among all business men in Mobile. The nature of my business is such as relates to these matters. I will not undertake to cite particular instances, but will say this much, that my business for many years has been buying cotton for foreign markets, and that I take up ships for

its transportation, and in consequence have often assisted the masters of vessels in the negotiation of their disbursement bills, and I have never yet met with an instance where it was not the distinct, though tacit, understanding that such a bill carried with it a
174 lien upon the ship. I know nothing as to what law it is founded upon—it is the custom. My statement of the existence of the custom is based upon the general understanding of business men here, and upon the fact that I have never heard its existence questioned, that is, the existence of the lien. I do state, that by the custom here, a lien is considered to exist in favor of the holder of a disbursement bill drawn by the master to raise funds to disburse his ship, when such bill is drawn upon the consignee against freight, with instructions to insure and freight, &c., and that said lien follows the bill to all successive hands through which it passes until paid. I know of no case in which legal proceedings were necessary to establish this lien. The lien exists in the absence of the agreement, and irrespective of the question, whether the credit of the master of the ship, with the freight accompanied by insurrance of it, is sufficient to procure the needed funds without the creation of a lien upon the vessel. My experience in, and observation of, the business of this port, enables me to say so.

Second. To the second cross-interrogatory he says: I did
175 not so state.

Third. To the third cross-interrogatory he says: I did not say so.

Fourth. To the fourth cross-interrogatory he says: I merely answered to that interrogatory, that I did not know.

Fifth. To the fifth cross-interrogatory he says: I did not say so.

Sixth. To the sixth cross-interrogatory he says: I do not know.

Seventh. To the seventh cross-interrogatory he says: I have produced and annexed no papers.

HENRY V. H. VOORHEES.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 9th day of February, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

176 Here follows the deposition of Joseph E. Murrell; also, the copy of charter-party of ship Jas. Guthrie.

1. Copy of letter dated Mobile, 23d March, 1856, signed Jos. E. Murrell.

2. Copy, letter dated Mobile, 24th March, 1856, signed Jos. E. Murrell.

3. Copy, letter dated Mobile, 24th March, 1856, signed Jos. E. Murrell.

4. Copy, additional agreements between Capt. S. Chase & Jos. E. Murrell in regard to the charter-party of the ship Jos. Guthrie,

dated Mobile, 22d March, 1856, signed Jos. E. Murrell & Stephen Chase.

5. Copy, letter to Jos. E. Murrell, from Capt. Chase, dated Mobile, 22d March, 1856, in reference to the subject of a second port in Spain, &c.

6. Original letter addressed to Abarzuza Bros., Cadiz, dated Mobile, 22d March, 1856, by Captain Chase.

177 Joseph E. Murrell, aged 50 years, being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the libellants, deposes and says:

To the first interrogatory he says: My name is Joseph E. Murrell; I am a merchant, and reside in Mobile, Ala., and am 50 years of age.

To the second interrogatory he says: There was a custom in March, 1856, before and since, in Mobile and its vicinity, in reference to liens upon vessels for the payment of disbursement bills drawn by masters of such vessels, and for the payment of advances of money made on such bills. This custom has prevailed in Mobile ever since I have been in business here—upwards of 20 years—and still prevails—to consider a captain's disbursement bill, *i. e.*, a bill drawn by a master of a vessel against his freight on his consignee, to raise money with which to disburse his vessel to enable her to go to sea, as binding on such vessel and her owners. This custom is uniform.

To the third interrogatory he says: The disbursements required to fit out the ship Jas. Guthrie for her voyage from Mobile to Ferrol, Spain, were actually necessary. They consisted of L. Merchants & Co.'s ship chandlery bill: inward and outward pilotage bills;

178 water and bay steamer's bill; amounting to about $4,000.

To the fourth interrogatory he says: The master of said ship James Guthrie had not then the means to defray such disbursements.

To the fifth interrogatory he says: Although consignee of Captain Chase, I allowed him, as is often done by consignees, himself to pay the bills against the ship, and I know he did pay such, for he told me so, as did also L. Merchant & Co., Wilson, the stevedore, and others here who had bills against said ship James Guthrie. Captain Chase disbursed his ship and paid her bills here with the $4,000, (about the amount against her at this port,) which he obtained on his disbursement bill upon Abarzuza Brothers, of Cadiz, Spain. Such amount of disbursements were indispensably necessary to enable Captain Chase to proceed on his voyage.

To the sixth interrogatory he says: Captain Chase applied to me, as his consignee, at Mobile, to draw a bill against the freight of the ship James Guthrie, on Abarzuza Brothers, of Cadiz, who had an agent at Ferrol to attend to the delivery of the cargo and the payment of the freight. I told Capt. Chase that such a bill could not

179 be negotiated in this market, except at a heavy loss; and as his consignee here, I advised him to draw upon his owners at Norfolk, Virginia, Messrs. Page & Allen, if a 60 d's sight bill could be passed on them, which, as they were not known here as a firm of means and credit, was very doubtful. Captain said he could not

pass a bill on his said owners, as they were not known, and that he was directed by them to draw against his freight; and he desired me to negotiate such a bill for them upon his consignees at Cadiz, Abarzuza Brothers, on the best terms possible. Captain Chase being without any responsibility himself, I told him that if he would have the freight of the James Guthrie insured by his consignees, Abarzuza Brothers, of Cadiz, where the parties he drew upon resided, and consent to bind the ship and owners also for the payment of his bill, in case the consignees did not accept or pay, that I would endeavor to find a purchaser for his bill in New Orleans where such a bill might be negotiated. Then, I wrote Puig, Mir & Co., or Mr. Puig, in one of the few lines I have been for years in the habit of writing them or him daily, of which no copies are kept, (nor do they either, it seems, file such few lines,) asking them if they would purchase or take Captain Chase's said bill filled up to their order to nego-
180 tiate. I represented the bill to them as undoubted, as it carried a lien on the ship and owners according to custom, and by Captain Chase's expressed pledge that the said ship and owners were bound for said bill, acting as I have done previously and since as Puig, Mir & Co's agent here for most of their business in Mobile. They left me, also, to take Captain Chase's said bill for them or not. Chase wrote the letter to his consignees, Abarzuza Brothers, dated 22d March, 1856, advising his bill against his freight, agreed with me that the said bill should carry a lien on the ship and owners; although, acting as the agent of Puig, Mir & Co., of New Orleans, I did not purchase this bill for them, or allow Captain Chase to draw it to their order, without first conferring with them upon the subject as before stated; and, in the mean time, I loaned to Captain Chase, temporarily, at his urgent request, $4,000, the amount for which his said bill was drawn, until it could be negotiated, and which amount, he stated that he required to pay his ship's disbursements to get her to sea. Puig, Mir & Co. made the advance as before stated, re-
quired by Captain Chase for the said disbursement of his
181 ship at Mobile, by taking his said bill upon his consignees at Cadiz, for $4,000 at par, which reimbursed me the same amount I had temporarily lent Captain Chase for that purpose, and which amount was applied by him, as before stated in answer 3, in paying the disbursements of his ship at this port, as he himself told me, and which was confirmed by several of the parties, whose bills against the Jas. Guthrie, Captain Chase had so paid, and which amounted, in the aggregate, to about $4,000. Considering the said bill amply secured, accompanied as it was with a lien upon the ship and owners, and orders by the captain to Abarzuza Brothers, the drawees, for insurance on the freight against which it was drawn, I did not hesitate to recommend Puig, Mir & Co., the libellants, to advance the money on said bill, to which they agreed before I made the temporary loan for them to Capt. Chase. I filled up the bill as they desired, sent it to them, and drew on them as they requested, and with the amount reimbursed myself, as before stated,

the amount I had temporarily loaned Capt. Chase on the pledge of his said disbursement bill until it could be negotiated.

182 To the seventh interrogatory he says: Annexed to this deposition are original letter of Captain Chase, dated 22d March, 1856, addressed to Abarzuza Brothers, of Cadiz, advising his said disbursement bill upon them of said date at 60 days' sight—order of Puig, Mir & Co., of New Orleans—for $4,000, against the freight of said ship James Guthrie from Mobile to Ferrol, and instructing them to insure said freight for an amount to cover said bill and all commissions, exchange, and expenses thereon. Extract of my letter of 23 March, 1856, to Puig, Mir & Co., transmitting to them Captain Chase's said draft for $4,009, requesting them to negotiate the same and advise me the rate of exchange, informing them that said bill was drawn against the freight of the ship James Guthrie. Extract of my letter of 24 March, 1856, to Puig, Mir & Co., enclosing to them second of said bill, and extract of my letter of 24th March, 1856, to Abarzuza Brothers, of Cadiz, informing them that Captain Chase had drawn upon them against his freight, and enclosing in my said letter the letter of Captain Chase to them of 22d March, 1856, advising his said bill upon them for $4,000. Captain Chase's letter to Puig, Mir & Co., dated Key West, June 25th, 1856, in answer

183 to Puig, Mir & Co's. letter to him of June 3d, 1856, notifying Captain Chase of the protest of his said disbursement bill for $4,000. I have seen both of these letters, in the former of which Captain Chase referred Puig, Mir & Co. to his owners for payment or settlement of his said disbursement bill; also letter of Abarzuza Brothers to Puig, Mir & Co., advising them that they had protested Captain Chase's said bill for $4,000, but had paid it under protest for the honor of the endorsers, Puig, Mir & Co. These letters, and others having reference to this case, I have seen, and thought they had been placed in the hands of Puig, Mir & Co's. attorneys. They are not in my possession.

To the eighth interrogatory he says: I know of nothing more that can benefit the libellants. I annex copy of charter-party of the ship Jas. Guthrie for two voyages, of which that from Mobile to Ferrol was the second and last.

First. To the first cross-interrogatory he says: My knowledge of such custom is founded on the well-established fact of its existence. What the rule of law is upon the subject I am unable to say. My statement that such a custom prevails in Mobile is founded

184 upon my own personal knowledge of the fact of its existence, as well as upon the opinion of all business men here. My business pursuits are as stated in my answer to first direct interrogatory, and they have afforded me opportunites of knowing the existence of the custom referred to. I do say that, by a custom here prevailing, a lien exists upon a vessel in favor of all or any of the successive holders of a bill of exchange drawn by a master or agent of a vessel to raise funds to pay the disbursements of such vessel, where such bill is drawn upon the consignees against the freight, with or without any express contract in respect to a lien on the ves-

sel. I know an instance of such having been sued. This was the case last year, I believe, of the American ship South Carolina, here. The ship was libelled for the amount of disbursement bill, but it was paid by the owners, I believe, before the case went to trial. But the custom is so well known and established, that it is seldom a case occurs here of the holder of a master's unpaid disbursement bill having to sue the ship and owners for its recovery. I do not remem-
185 ber a case where the owners allowed the holder of a master's disbursement bill to go so far as to permit such a case to go to trial for the securing of the money paid for a captain's disbursement bill upon his consignees or owners.

Second. I never was on board the ship James Guthrie, but I know that she needed those supplies. This information I drew from Captain Chase himself, and from the fact that all ships of her tonnage require supplies, such as provisions and ship chandlery, stevedore, pilot, water, and other indispensable bills, and which, for a ship of the James Guthrie's tonnage, seldom amount to less than $4,000 to $5,000. As consignees of the ship James Guthrie, I know her wants from her captain, and having allowed the captain to pay the ship's bills, I do not know the exact amount of such, nor the exact total amount of them all, though I do know that they amounted, in the aggregate, to about $4,000.

Third. To the third cross-interrogatory he says: My knowledge that the master of the ship James Guthrie, Stephen Chase, had no means to defray the disbursements of his ship, was derived from Captain Chase himself. The sum required was, as I have stated,
186 about $4,000; and, as a further proof that Capt. Chase was without pecuniary means, on the 10th March, 1856, twelve days previous to the date of his aforesaid bill for $4,000, I loaned him, at his request, one hundred dollars, which he said to me he needed, having no money himself; and which $100 he did not repay me until I had given him the $4,000 as a loan upon his said bill of exchange.

Fourth. To the fourth cross-interrogatory he says: As I have stated in my answer to the fifth direct interrogatory.

Fifth. To the fifth cross-interrogatory he says: I loaned Captain Chase on Puig, Mir & Co.'s credit, and not on Capt. Chase's, after they had agreed to take his disbursement bill from me, $4,000, on the 22d March, 1856, being his consignee here, against and upon the pledge of his disbursement bill, of same date, for $4,000, upon Abarzuza Brothers, of Cadiz, as aforesaid, to expedite him in paying the disbursement bills of his said ship, which he did then pay, and to enable him to get his said ship, the James Guthrie, to sea, until his said bill could be negotiated, which could not be done in Mobile, in consequence of its being drawn upon, and payable at, Cadiz, a place with which Mobile has little or no commercial intercourse.
187 The libellants, Puig, Mir & Co., advanced to Captain Chase, through me, on his said bill, the $4,000, (to reimburse me the same amount I had previously loaned him for their account.) by agreeing with me, before I made the said temporary loan of $4,000 to Capt. Chase on his disbursement bill upon his consignees, Abar-

zuza Brothers, to take said bill of me, as consignee of the James Guthrie, which they took at par of exchange, and for my reimbursement of which said amount of $4,000 I drew upon Puig, Mir & Co., and which said draft of mine upon them they paid at maturity. Puig, Mir & Co., resided, and still resided, at New Orleans. The master, Stephen Chase, never saw them that I know of. As agent for Puig, Mir & Co., until Capt. Chase could get his said bill for $4,000, which he had placed in my possession, negotiated, I loaned him for Puig, Mir & Co., who had agreed to pay or negotiate said bill after it should be filled up to their order and remitted to them, the amount of his said bill, $4,000, and with which $4,000 he disbursed his ship; and before the said bill was remitted to Puig, Mir & Co., Puig, Mir & Co. purchased Capt. Chase's said bill for $4,000 against his freight upon his consignees, Abarzuza Brothers, of Cadiz, and he, Capt. Chase,
188 instructed his said consignees to insure such freight to the amount of his said bill upon them, and the charges and expenses thereon. The payment which Puig, Mir & Co., made on said bill of $4,000 was the price of said bill at par of exchange, which they had purchased. Puig, Mir & Co. paid the said $4,000, by paying my said draft upon them for my reimbursement of same amount.

Sixth. To the sixth cross interrogatory he says: Puig, Mir & Co. sold the said bill of Capt. Chase for $4,000 to their order upon Abarzuza Bros., of Cadiz, through the agency of an exchange broker in New Orleans. The said bill was protested in Cadiz for non-acceptance by the drawees, Abarzuza Bros., and afterwards taken up and paid by them for the honor of the endorsers, Puig, Mir & Co.: and the amount, $4,000, Puig, Mir & Co., repaid them, together with all charges and expenses thereon, when the said protested bill was returned by Abarzuza Bros. to Puig, Mir & Co.

Seventh. To the seventh cross interrogatory he says: Two of the letters or extracts from same, annexed to this deposition, dated 23d and 24th March, 1856, I wrote myself, and I know them to be genuine originals. Capt. Chase's letter, of 22d March, 1856, which I
189 also annex, I know to be original. The same was written for Capt. Chase, at his request, in my office, in Spanish, and correctly translated for him before he signed it.

JOS. E. MURRELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to February 25th, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

At the execution of a commission for the examination of witnesses, between Magin Puig *et al.*, libellants, and the ship James Guthrie, her tackle, &c., the within paper writings were produced and shown to Joseph E. Murrell, and by him deposed unto at the time of his examination, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

190 Copia. MOBILA, 22*d Marzo*, 1856.

S'res ABARZUZA HERMANOS, *Cadiz:*

MUY S'RES MIOS: Despachado en este dia la fragata anno de sur mando elamada "James Guthrie" cujo cargam'to decrento once perchas de arboladum y otras maderas nadalis esta destinado p'a el arsenal del Ferrol, frugo en conscienunto de vs. que con el objeto de degar cubiertos los desembolsus enrogados per el citado buque durante sa permanencia en este puerto he girado con esto mesina fecha y No. 292 a la orden de los S'rs Puig, Mir & Co. de New Orleans, y a 60 per ct. he 3 a de cambio pr. valor de $4,000—cuatro mil pesos fuertes, la cual espero se serviran aceptar acuenta del enpirte de mi flete, que dando vs. para su resguardo.

Debitamente antoriguados per le presente para asigurar p'r igual cantitad de aguel.

S'r af'm L. S.
J. B. S. M.
(Firmadis) STEPHEN CHASE.

P. S. Al efectuar el eseguro faculto a vos per que lo hagan pir los $4,000 masla deferentia q'r resulte del cambia—gastos y comission.
(Pinados) STEPHEN CHASE.

191 Copia. MOBILA, 23*d de Marza*, 1856.

S'rs PUIG, MIR & Co., *N. Orleans:*

MUY S'RES MIOS: * * * El Cap'n Chase ha girado á 60 per ct. á cargo de los S'rs Abarzuza Herm's una Litra per $4,000 la misma que les inclugo pa qe se servan ingo ciarla avesandome el desct'to a que se efectar la operacian.

Adjunto conocimiento, &c.,
(Firmada) JOS. E. MURRELL.

Copia. MOBILA, 24 *Marzo*, 1856.

S'rs ABARZUZA HERM'S, *Cadiz:*

MUY SR'S MIOS: * * * El Cap'n Chase de la frag'tn arna "Jas. Guthrie" sqimlos participa en la que los incluyo ha girado como es costumba á cargo de v's *a* 60 per ct. y orden de los S'rs Puig, Mir & Co. una Litra per $4,000 a coverta del importe de sa flete con autorizacion p'd efectuar el segure.

La af'm L. S.
J. B. S. M.
(Firmada) JOS. E. MURRELL.

192 W. Sedley Johnson; residence, Mobile; occupation, book-keeper; age, 56 years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on behalf of the libellant, deposes and says:

First. To the first interrogatory he says: W. Sedley Johnson; 56 years of age; occupation, book-keeper; residence, Mobile.

Second. To the second interrogatory he says: I have always understood, during the seven years I have resided in Mobile, and heard from parties who know, that the custom is general in Mobile for a vessel to be liable by a lien on same, for money paid for a disbursement bill drawn by the captain of such vessel upon his consignees and owners. I have never had a case of the kind myself, but it is a well-known fact here, that such bills always carry a lien upon the vessel, which renders captain's disbursement bills of comparatively ready sale in consequence of the security by said lien.

Third. To the third interrogatory he says: I know that disbursements were required for fitting out the ship James Guthrie for her voyage from Mobile to Cadiz or Ferrol, in Spain, in March, 1856. I do not know what all the matters and things were which re-
193 quired such disbursements. Ship chandlery, stevedores, water, pilotage, advances to crew, &c., were the principal bills made by the said ship in this port to the amount altogether of about $4,000.

Fourth. To the fourth interrogatory he says: The master of said ship then had no means to defray such disbursements. He said, in my hearing, that he should require $4,000 for that purpose.

Fifth. To the fifth interrogatory he says: I know that the said master did, in fact, disburse said vessel for said voyage; said master disbursed the ship James Guthrie, at Mobile, to the amount of about $4,000.

Sixth. To the sixth interrogatory he says: Libellants, Puig, Mir & Co., did advance money to defray said disbursements. At the request of said master, Joseph E. Murrell, his consignee at Mobile, loaned him, on the 22d March, 1856, as per his receipt, $4,000, which he, Chase, said he required to disburse his ship at this place; and for which said loan said master gave and pledged to Jos. E. Murrell a bill drawn by him, Stephen Chase, dated 22d March, 1856, at 60 days' sight, upon his consignees at Cadiz, Abarzuza Bro.'s, for
194 $4,000. This bill the said master drew against his freight from Mobile to Cadiz or Ferrol, and he wrote to his said consignees, Abarzuza Bro.'s, on the same day, 22d March, 1856, to advise having so drawn upon them against the said freight of the James Guthrie, and he instructed them in his said letter to insure his said freight to an amount to cover the $4,000 for which he had drawn upon them, and the expenses and com's, exchange, &c., upon his said bill. Jos. E. Murrell not being able to negotiate Capt. Chase's bill for $4,000 in Mobile, he filled it up to the order of Puig, Mir & Co., of New Orleans, who had agreed to take it, and the same was transmitted to them by letter on the 23d March, 1856, when they, Puig, Mir & Co., endorsed said bill and sold it at New Orleans at par of exchange. For which amount, $4,000, Jos. E. Murrell drew upon Puig, Mir & Co. on the 24th March, 1856, at 30 days' sight, for his reimbursement of that amount loaned by Jos. E. Murrell to Capt. Chase on the 22d March, 1856, upon the pledge of said bill. Puig, Mir & Co. paid said bill of Jos. E. Murrell's, at 30 days' sight, upon them for $4,000 at its maturity.

Seventh. To the seventh interrogatory he says: I have an-

195 nexed to this, my deposition, a copy of the letter of Captain Chase to Abarzuza Bro.'s, of Cadiz, dated March 22d, 1856.

Eighth. To the eighth interrogatory he says: I know nothing more than I have already stated, which may be of benefit to the libellants in this cause.

First. To the first cross-interrogatory W. Sedley Johnson says: As answered to the second direct interrogatory.

Second. To the second cross-interrogatory he says: Capt. Chase told me, as well as Jos. E. Murrell, in my hearing, that he, Chase, required $4,000 to disburse his ship James Guthrie, for the voyage from Mobile to Cadiz or Ferrol. I never was on board the James Guthrie.

Third. To the third cross-interrogatory he says: Capt. Chase told me that he had no means then to disburse his said ship, and was greatly embarrassed how to raise the necessary funds for that purpose. It was some days before Joseph E. Murrell consented to take Capt. Chase's said bill upon his consignees at Cadiz, owing to the difficulty of negotiating it upon that place. On the 10th March, 1856, some days previous to the drawing of said bill, he, Capt.
196 Chase, borrowed of Jos. E. Murrell $100, which he said he required, as he had no money whatever.

Fourth. To the fourth cross-interrogatory he says: Wilson, the stevedore, Mr. Denver, deceased, of the firm of L. Merchant & Co., and others, told me that Capt. Chase had paid their bills against the ship James Guthrie before she sailed from Mobile on her said voyage to Cadiz or Ferrol.

Fifth. To the fifth cross-interrogatory he says: As stated in answer to 6th direct interrogatory, Joseph E. Murrell loaned Capt. Chase on the 22d March, 1856, $4.000 against and upon the pledge of his (Capt. Chase's) said bill for $4,000 of same date, at 60 days, upon his consignees at Cadiz, Abarzuza Bro.'s, on account of his freight, which bill he placed in Mr. Murrell's possession.

Puig, Mir & Co. agreeing to take the said bill of Capt. Chase for $4,000, it was filled up to their order and sent to them by letter on the 23 March, 1856, which they endorsed and negotiated in New Orleans at par of exchange. Jos. E. Murrell drew upon Puig, Mir & Co. the 24 March, 1856, at 30 days' sight for the same amount, $4,000, which draft of Jos. E. Murrell upon them, they duly paid, which reimbursed Joseph E. Murrell the amount he had for their account previously loaned Capt. Chase on the 22d March, 1856.
197 This loan was made in Mobile. The advance of $4,000 to Capt. Chase against his said bill for same amount was made by Puig, Mir & Co. in New Orleans, when they agreed to take his said bill to reimburse Jos. E. Murrell the amount he had previously loaned Capt. Chase for Puig, Mir & Co. Puig, Mir & Co. resided and still reside in New Orleans. I do not know if Capt. Chase ever saw them. Capt. Chase had no means, but was enabled to pay his disbursement bills at Mobile by the temporary loan of $4,000 made to him by J. E. Murrell for Puig, Mir & Co. until they could negotiate his (Chase's) said bill, which they had agreed to take, and

which disbursements Capt. Chase paid before the amount of $4,000 had been reimbursed Jos. E. Murrell by Puig, Mir & Co.

Puig, Mir & Co. did purchase Capt. Chase's said bill for $4,000 of 22 March, 1856, at 60 days' sight, upon Abarzuza Bro.'s, of Cadiz, against his freight, which he instructed Abarzuza Bro.'s to insure to an amount sufficient to cover his said bill and expenses thereon. The payment of $4,000 was made by Puig, Mir & Co's paying Jos. E. Murrell's draft upon them for $4,000, and was the price, at par, of Capt. Chase's said bill for $4,000 to their order.

198 Sixth. To the sixth cross-interrogatory he says: Puig, Mir & Co. negotiated Capt. Chase's said bill for $4,000 at par in New Orleans. They sold it in the market there. I do not know to whom. Puig Mir & Co. became again possessed of Capt. Chase's said bill for $4,000, by it being returned to them by Abarzuza Bro.'s in Cadiz. Abarzuza Bro.'s, the drawees, protested said bill of Capt. Chase for $4,000, and took it up and paid it under protest for the honor of the endorsers, Puig, Mir & Co. The said bill for $4,000 was taken up in Cadiz in the manner here stated.

Seventh. To the seventh cross-interrogatory he says: I have annexed to my deposition a copy of Capt. Chase's letter of 22d March, 1856, to Abarzuza Bro.'s, of Cadiz.

W. SEDLEY JOHNSON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to the 26th February, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

Here follows the copy letter of Captain Chase to Abarzuza Bro.'s, of Cadiz, dated Mobile, 22d March, 1856. See fol. 375.

199 A. J. Ingersoll, of Mobile; age, 35 years; occupation, merchant; being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

First. To the first interrogatory he says: My name is A. J. Ingersoll; age, 35 years; and occupation, merchant; my place of residence is Mobile.

Second. To the second interrogatory he says: It was universally considered in Mobile by merchants in March, 1856, and before and since, that a lien existed on vessels for the payment of disbursement bills, drawn by the master of such vessels, or for the payment of advances of money made on such bills; such understanding prevailed here in Mobile; has existed ever since I have been in business, and is deemed binding to the extent of the vessel's disbursements. It is uniform.

Third. To the third interrogatory he says: I do not know.

Fourth. To the fourth interrogatory he says: I do not know.

Fifth. To the fifth interrogatory he says: I do not know.

Sixth. To the sixth interrogatory he says: I do not know.

200 Seventh. To the seventh interrogatory he says: I have no such correspondence, or copies thereof.

Eighth. To the eighth interrogatory he says: I have no such correspondence, or copies thereof.

First. To the first cross-interrogatory he says: My answer to the second direct interrogatory is based upon my knowledge of the general understanding which prevails on the subject among business men in Mobile; but I know of no particular cases in which the question has been raised and adjudicated.

I know not upon what law it is founded. My statement is based upon my knowledge of mercantile customs in Mobile.

I have been in the shipping business in Mobile for the last twenty years, and my opportunities for knowing the custom have been excellent.

I do not undertake to say that the understanding exists, in the absence of any expressed contract; a vessel would not be able to sell its bill on the owners if such were not the understanding. I cannot mention particular cases. The understanding exists in the absence of an agreement, and irrespective of the question whether the credit of the master or agent of the ship is sufficient or not. I can
201 say so from my own experience in taking bills on owners of vessels without asking the question. But I know of no particular case in which the lien has been asserted and maintained by law.

Second. To the second cross-interrogatory he says: I have not so stated.

Third. To the third cross-interrogatory he says: I did not say so.

Fourth. To the fourth cross-interrogatory he says: I made no answer to said interrogatory.

Fifth. To the fifth cross-interrogatory he says: I did not say so.

Sixth. To the sixth cross-interrogatory he says: I do not know.

Seventh. To the seventh cross-interrogatory he says: I have not produced or annexed any such correspondence.

A. J. INGERSOLL.

Examination taken and reduced to writing, and by the witness subscribed and sworn to this second day of March, 1859, before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

202

[Translation]

MOBILE, *March 22d*, 1856.

Messrs. ABARZUZA BRO.'S, *Cadiz:*

DEAR SIRS: The Amer'n ship "James Guthrie," under my command, having cleared this day with a cargo of 111 spars and other naval ship-building timber, bound for the arsenal of Ferrol, I beg to advise you, that for the purpose of paying the bills for the disburse-

ments of the said ship, during her stay in this port, I have drawn under this date, and No. 292, to the order of Messrs. Puig, Mir & Co., of New Orleans, at 60 days' sight, 1st, 3d of exchange, for $4,000, four thousand dollars; which bill you will please accept on account of the amount of my freight, which, by the present, you are duly authorized to have insured to the amount of my said bill.

Yours, resp'y,

(Signed) STEPHEN CHASE.

P. S.—In effecting the above insurance, I hereby authorize you to insure for the said $4,000, and also to cover the difference of exchange, expenses, and commission upon the same.

(Signed) STEPHEN CHASE.

203 At the examination of a commission for the examination of witnesses between Magin Puig, *et al.*, libellants, and the ship Jas. Guthrie, the within paper writing was produced and shown to W. Sedley Johnson, and by him deposed unto at the time of his examination before—

R. B. OWEN,
LEWIS S. LUDE,
Comm'rs.

204 Copy, deposition of witnesses for libellants, viz:

1. Geo. Wilson. 2. C. D. Dickey. 3. Dan'l Wheeler. 4. (Omitted.) Jos. E. Murrell. 5. W. Sedley Johnson. 6. Cha's Walsh. 7. A. J. Ingersoll. 8. H. V. H. Voorhies. 9. Geo. W. Boyd.

Filed 16th March, 1859.

205 District court of the United States, southern district of New York.

Interrogatories to be administered to F. De F. Martin and J. Graw, of New Orleans, in the State of Louisiana, witnesses to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the district court of the United States in and for the southern district of New York, wherein Magin Puig, Ramon Mir, and Juan Batista Soulere are libellants against the ship James Guthrie, her tackle, &c., and James W. Phillips is claimant on the part and behalf of the libellants, before the commissioner or commissioners in the writ hereto annexed named.

First interrogatory. What is your name, age, occupation, and place of residence?

Second interrogatory. Do you know the libellants, Puig, Mir & Co.? And if yea, how long have you known them?

Third interrogatory. Do you know the ship James Guthrie? And if yea, how long have you known her?

Fourth interrogatory. Where was said ship on the twenty-
206 second of March, one thousand eight hundred and fifty-six? And at and about that time where did she then belong? Who

was then her owner, and who was then her master? And was or was not Captain Stephen Chase her master?

Fifth interrogatory. If, by your answer to the foregoing, it should then appear that she was at Mobile, then when did she arrive there? How long did she stay there? And when did she depart? And what was her destination on such departure? And who was her consignee?

Sixth interrogatory. Did or did not said ship receive repairs and fitting out for her voyage while at Mobile? And if she did, who procured said repairs and outfitting? In what did they consist? Were the same necessary? And what was the amount of costs thereof?

Seventh interrogatory. What means had the master of defraying the cost of such outfitting and repairs? And how did he provide means therefor?

Eighth interrogatory. Do you know whether or not the master of said ship applied to any parties for a loan to defray such costs of repairs and outfitting? And if yea, state when, where, how,
207 and to whom he applied; and, also, state whether such loan was effected, and how, and from whom, and upon what paper or vouchers, and on what agreement or lien.

Ninth interrogatory. Do you know whether Puig, Mir & Co., of New Orleans, the libellants in this suit, advanced money to said master upon the credit of said ship for the use of said ship, and whether or not a disbursement bill of said master was drawn for the amount so loaned? If yea, then state the particulars and circumstances thereof fully and at large, and state the amount of such loan. State when and how Puig, Mir & Co. received said bill, and state the contents thereof; or, if in your power so to do, annex a copy thereof to your deposition, and also state any other facts and circumstances within your knowledge, relating to said bill.

Tenth interrogatory. Do you know, and if so state, what was the consideration of said bill of exchange? Was it, said bill, a principal debt or a collateral security? Was it given, received, and taken in payment of absolute satisfaction of a loan made? Or was it given, received, and taken as and for a collateral means of payment of such loan? Was it given, taken, or received in discharge and satisfaction of a lien on the ship for advances, or as a collateral means
208 of obtaining payment of the debt for which the ship was liable? Or how otherwise? State fully and particularly.

Eleventh interrogatory. What amount of money, raised by the master and coming from the libellants, was used by the master in said repairs and outfitting?

Twelfth interrogatory. If you have in your possession or under your control any correspondence between the said master and any other person or persons, whether letters written by or from said master, or letters or copies of letters, written to him, touching or concerning said ship or said repairs and outfitting, or said money or said bill of exchange, or any of the matters mentioned in your deposition, then produce and verify the same, and annex them to your deposition.

Thirteenth interrogatory. If you have any other paper or papers in your possession or under your control, touching or concerning the said ship, or her repairs and outfitting, or the security therefor, or the means for the same, or the said bill of exchange, or the transmission thereof, or the protest, or the dishonor thereof, or any other matter or thing material to this suit, then produce and verify
209 . the same and annex them to your deposition.

Fourteenth interrogatory. Do you know whether the said master wrote to the drawees of said bill, Abarzuza Brothers, advising them of said bill? And if yea, produce said letter, or, if you cannot produce it, give a copy thereof; or if you cannot give a copy thereof, then state all the substance and contents thereof; and state in particular to whom was it addressed and at what place; when was it written; when and where was it mailed or sent off; how did the time of sending off or mailing the same compare or correspond with the drawing, or sending off, or issuing said bill of exchange, and what was done with said letter and by whom.

Fifteenth interrogatory. Did or did not any other person than said master, and who, write to said Abarzuza Brothers, at or about the same time? If so, who so wrote? When was the letter so written sent off? And from what place? And what were the contents thereof? Produce the original or a copy thereof, if in your power.

Sixteenth interrogatory. Was or was not an answer received to the letter mentioned in your answer to the last above interrogatory? And if yea, who received it? And by whom was it written?
210 And annex the same to your deposition.

Seventeenth interrogatory. Do you know any other matter or thing which may benefit the libellants in this suit? If yea, state the same fully and particularly.

J. ANGUS MANNING,
Proctor for Libellants.

Endorsed: U. S. district court. Magin Puig *et al.* vs. The ship James Guthrie, &c. Interrogatories. J. A. Manning, proctor for libellants. Allowed, subject to all proper exceptions. Butler, Evarts & Southmayd, proctors, &c.

211 In the district court of the United States for the southern district of New York.—In admiralty.

Cross-interrogatories to be administered on the part of James W. Phillips to F. de F. Martin and J. Graw, of New Orleans, in the State of Louisiana, witnesses to be examined on the part of the libellants, in a cause pending in this court, in favor of Magin Puig, Ramon Mir, and Juan Baptista Soulere, libellants, against the ship James Guthrie, her tackle, &c., and James W. Phillips, claimant thereof.

First cross-interrogatory. If, in answer to the fourth direct interrogatory, you undertake to name the owner or owners of the ship James Guthrie, at the time therein referred to, state what personal

knowledge you have upon the subject, and how and whence such knowledge was derived?

Second cross-interrogatory. If, in answer to the sixth direct interrogatory, you state that the ship James Guthrie, while at Mobile, received repairs and outfitting, and of what the same consisted, and what was the cost thereof, state what personal knowledge you have in relation thereto. Did you personally superintend the same? Did you see the same put upon or applied to the use of said ship?
212 Did you, and if so, when, how often, and for what purpose go aboard said ship? Did you pay the bills? And if not, how do you know of their payment? If you state that such repairs and outfittings were necessary, state what personal knowledge you had in respect of the requirements of the ship in such respects, and how such knowledge was derived.

Third cross-interrogatory. If, in answer to the seventh direct interrogatory, you have undertaken to state what means the master had of defraying the cost of the outfitting and repairs therein inquired of, and how he provided means therefor, state what personal knowledge you have in respect thereof, and whence derived. How do you know what means for such purposes were in the hands or under the control of said master?

Fourth interrogatory. If, in answer to the eighth direct interrogatory, you shall have stated any application of the master for a loan for the purpose therein mentioned, or the making of any such loan, or the terms of any agreement therefor, state your means of personal knowledge in relation thereto. Were you present at such application? The assent thereto? The making of any agreement in respect thereof? Or the paying over of the money? If so, who else was pres-
213 ent? Was such agreement in writing or by parol? If in writing, what has become of it? If by parol state fully what was said upon the subject, and by whom, and give the words used as nearly as may be.

Fifth cross-interrogatory. If, in answer to the ninth direct interrogatory, you shall have stated that Puig, Mir & Co., the libellants, advanced money to said master for the use or on the credit of said ship, state how you know such advance was made on the credit of said ship or otherwise, whether you were present at the making of any agreement to that effect; and if so, when, where, and between whom such agreement was made, whether it was in writing, and if not, by what words the same was made; and, if you shall have stated that the amount of any such loan was paid over to the master, state at what date or dates, and in what sum or sums, in particular, such payment or payments was or were made, through whose hands such payments passed, and how you derived your knowledge in respect thereof; and, if you shall have stated that the amount thus advanced, or any part thereof, was used for the outfitting or repairs of the said ship, state to what particular purpose each part thereof was applied, and at what time or times, in particular, and how your know-
214 ledge thereof is derived.

Eighth cross-interrogatory. If, in answer to the tenth direct

interrogatory, you shall have undertaken to state the consideration of the bill of exchange therein referred to, state what personal knowledge you have in that respect, and whence derived. If you shall have stated that such bill of exchange was received by way of collateral security, or that the same was not taken and received in discharged or satisfaction of a lien on the ship for advances, or that any such lien was reserved upon the taking of said bill of exchange, state what personal knowledge you have of the agreement between the parties in those respects, and how it is that you are enabled to state whether or not it was received as collateral security, and whether or not a lien on the ship was reserved. Were you present at the making of any agreement in those respects; if so, what persons made such agreements, and when and where? Was it in writing; if so, where is the paper? Was it by parol; if so, give the words by which such agreement was made.

Seventh cross-interrogatory. If, in answer to the eleventh direct interrogatory, you shall have stated that any amount of money coming from the libellant was used by the master of said vessel in her repairs and outfitting, state in full your means of knowledge in respect thereof, and say when and in what sums the moneys were received from the libellants, and when and by whom the same were expended for such purposes, and through whose hands the moneys passed, and state the particulars of the repairs and outfittings.

Eighth cross-interrogatory. Where do the libellants reside? At what time was the said bill of exchange delivered to them? State the exact amount of the consideration by them allowed therefor. At what rate of exchange did the libellants take said bill? Did they not purchase said bill at that rate in the ordinary course of business? To whom did the libellants pay over the sum allowed for the said bill of exchange?

Ninth cross-interrogatory. While the ship James Guthrie was at Mobile, upon the occasion referred to in the direct interrogatories, was she under charter; if so, to whom, for what voyage, and upon what terms? Were you, or was any house or person with whom you were connected as partner, clerk, or agent, interested in such charter, or in the furnishing the cargo or loading the vessel thereunder, or did you or such house or person with whom you were connected act as agent or agents of the charterer, or act as consignee of the ship, or transact any, and what, business for her account while at Mobile, on the occasion aforesaid? If so, state in detail all the transactions as such agent or consignee of the ship or charterer or charterer's agent, and annex copies of the accounts relating thereto. Did you, or such house or persons with whom you were connected, have charge of the disbursements of said vessel while at Mobile? What was the whole amount of such disbursements, and when, in particular, were the same made, and how, and when were the same reimbursed? What commissions were charged thereon? Were the proceeds of the bill of exchange before mentioned, or any moneys for which such bill was given, applied in

such reimbursement; if so, what amount was credited therefor, and when, and what charges or deductions were made for or on account of exchange or commission on said bill? Was any account in relation to the disbursements of said vessel, upon the occasion aforesaid, or the repayment thereof, or relating to the said bill of exchange, or the moneys advanced or paid therefor, rendered by you, or any
217 house or person with whom you were connected as partner, agent, or clerk to the master of said vessel; if so, when and where? Have you such account, or a copy thereof? If so, produce the same, and annex it to your deposition.

Tenth cross-interrogatory. When did said ship James Guthrie sail from Mobile, where was she bound, with what cargo, and by whom supplied? What was the amount of her freight or charter-money on such voyage? To what house in Spain was she consigned?

Eleventh cross-interrogatory. Do you know of the master of said vessel having written a letter to Abarzuza Bros., of Cadiz, the drawees of the bill of exchange before mentioned, instructing them to insure the freight of said vessel on such voyage to any, and what, amount? What did the captain do with such letter? Did he deliver it to any one for transmission; and if so, to whom, and when, and with what instructions? Were such instructions assented to, or was any, and what, notification given to the captain that they would not be followed? Who suggested to the captain such mode of transmission of said letters?

Twelfth cross-interrogatory. Were you, or was any house or persons with whom you were connected as partner, clerk, or otherwise, interested in the charter of said ship James Guthrie on a previous voyage, either as principal or agent? From and to what port
218 or ports did said vessel go upon such previous voyage, with what cargo, by whom supplied, and who was consignee of said vessel and of such cargo on such voyage? Upon such previous voyage, did the master or owners of said vessel give any, and what, instructions for insuring the freight; and if so, to whom were such instructions given, and through what channel, and where was the insurance to be effected? Did the vessel arrive safely on such previous voyage? Was any, and if so, what, amount charged to, and allowed by, the said ship and her owners for insurance of such freight under such instructions; if so, what was the amount so charged and allowed? Upon what amount of insurance, when, where, and by whom stated to have been effected, and at what rate of premium? Do you know whether or not such insurance was actually effected?

Thirteenth cross-interrogatory. If, in answer to the twelfth or thirteenth direct interrogatory, you produce any copies of letters stated to have been addressed to the master of said vessel, state whether you have any; and if so, what knowledge of the receipt by said master of the original thereof.

Fourteenth cross-interrogatory. If you shall have stated, in answer to any of the interrogatories, the transmission to Abarzuza Brothers of the letter to them written by the master of the ship James
219 Guthrie, instructing them to insure the freight of the said ship,

state by what channel the same was transmitted to them, at what date, in particular, and at how much earlier a period the same could have been transmitted.

Fifteenth cross-interrogatory. Were the libellants, Puig, Mir & Co., in any way interested, directly or indirectly, in the charter of the ship James Guthrie, which was pending at the time they took the said bill of exchange, or in the cargo which was furnished to said vessel on the voyage commencing about that time? If so, state the nature and extent of such their interest.

Sixteenth cross-interrogatory. Is Joseph E. Murrell, or John W. Murrell, or any person other than Puig, Mir & Co., and if so, who, interested in the claim involved in this suit, or in the bill of exchange before mentioned, or was any person other than Puig, Mir & Co., so interested at the time of the commencement of this suit, or at any time afterwards; if so, what was or is the nature and extent of any such interest of any person other than Puig, Mir & Co.?

BUTLER, EVARTS & SOUTHMAYD,
Proctors for Claimant.

Endorsed: United States district court, southern district of New York. In admiralty. The ship James Guthrie, James W.
220 Phillips, claimant, *ads.* Magin Puig and others. Cross-interrogatories. Butler, Evarts & Southmayd, proctors.
Allowed, subject to all proper exceptions.

J. A. MANNING,
Proctor, &c.

221 (Copy.)

Depositions of witnesses taken under commission before Walter H. Peters, commissioner, of New Orleans.

United States district court, southern district of New York.

MAGIN PUIG and others, libellants,
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c.,
JAS. W. PHILLIPS, cl'm't and respond'ts.

Depositions of witnesses produced, sworn, and examined the twenty-third day of September, in the year of one thousand eight hundred and fifty-seven, at my office, No. 50 Camp street, in the city of New Orleans, parish of Orleans, and State of Louisiana, before me, Walter Hicks Peters, commissioner named, under and by virtue of a commission issued out of the United States district court for the southern district of New York, in a certain cause therein depending and at issue between Magin Puig and others, libellants, against the ship James Guthrie, her tackle, &c.; James W. Phillips, claimant and respondent, as follows:

Fernando de Francisco Martin, a resident of the city of New Orleans, State of Louisiana, mercantile clerk, aged forty-three
222 years and upwards, being duly and publicly sworn, pursuant

to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows:

To the 1st interrogatory he saith: My name is Fernando de Francisco Martin. I am a mercantile clerk and book-keeper; and reside in the city of New Orleans, State of Louisiana.

To the 2d interrogatory he saith: Yes; I have known them since the year 1848.

To the 3d interrogatory he saith: I know that there is a ship by the name of the James Guthrie; I have known this since March, 1856. I never saw the ship.

To the 4th interrogatory he saith: The ship was in Mobile at the period designated; she was about sailing for Ferrol, Spain. At that time I knew nothing of her ownership, but since then have learned that she was owned by Page & Allen, of Portsmouth, Va., or rather that they were two of her owners. Captain Stephen Chase was master of the Guthrie.

To the 5th interrogatory he saith: I do not know when the ship arrived in Mobile; how long she remained there; nor the day
223 of her departure. Her consignee in Mobile was Joseph E. Murrel. Her destination, as I have before said, was Ferrol, in Spain.

To the 6th interrogatory he saith: I have no knowledge of anything sought to be elicited by this interrogatory.

To the 7th interrogatory he saith: I do not know, and cannot answer.

To the 8th interrogatory he saith: I do not know whether he applied to any parties for such loan for such purpose or not.

To the 9th interrogatory he saith: I am and was the book-keeper of Puig, Mir & Co. Said firm made no advances to Capt. Chase, except by purchasing the captain's disbursements bill, amounting to four thousand dollars, $4,000, drawn by him on the 22d March, 1856, on Abarzuza Brothers, of Cadiz, against his freight money. This bill was bought by Puig, Mir & Co.; endorsed by them, and sold in this market, and afterwards returned protested for non-acceptance. When Capt. Chase, and owners of his ship, were advised of the protest and of the fact, by Puig, Mir & Co., who transmitted them their claim for the amount of Capt. Chase's said protested bill and damages, amounting to four thousand four hundred and seven $\frac{50}{100}$ dollars, under date 24th of July, 1856. When Puig, Mir & Co. bought
224 said disbursement bill, it was, and they (P. M. & Co.) understood that it was drawn by Capt. Chase for the disbursement of his ship, the James Guthrie, and consequently bought and sold it with their endorsement, upon the strength of its being a disbursement bill of said ship James Guthrie, and not on the individual credit of Capt. Stephen Chase. Said bill was transmitted by Joseph E. Murrell, consignee of the James Guthrie in Mobile, to Puig, Mir & Co., who bought, endorsed, and sold the same.

To the 10th interrogatory he saith: I repeat that Puig, Mir & Co. bought the bill as Capt. Chase's disbursement bill, expecting all the liens which a disbursement bill carries with it. It was not given,

state by what channel the same was transmitted to them, at what date, in particular, and at how much earlier a period the same could have been transmitted.

Fifteenth cross-interrogatory. Were the libellants, Puig, Mir & Co., in any way interested, directly or indirectly, in the charter of the ship James Guthrie, which was pending at the time they took the said bill of exchange, or in the cargo which was furnished to said vessel on the voyage commencing about that time? If so, state the nature and extent of such their interest.

Sixteenth cross-interrogatory. Is Joseph E. Murrell, or John W. Murrell, or any person other than Puig, Mir & Co., and if so, who, interested in the claim involved in this suit, or in the bill of exchange before mentioned, or was any person other than Puig, Mir & Co., so interested at the time of the commencement of this suit, or at any time afterwards; if so, what was or is the nature and extent of any such interest of any person other than Puig, Mir & Co.?

BUTLER, EVARTS & SOUTHMAYD,
Proctors for Claimant.

Endorsed: United States district court, southern district of New York. In admiralty. The ship James Guthrie, James W.
220 Phillips, claimant, *ads.* Magin Puig and others. Cross-interrogatories. Butler, Evarts & Southmayd, proctors.

Allowed, subject to all proper exceptions.

J. A. MANNING,
Proctor, &c.

221 (Copy.)

Depositions of witnesses taken under commission before Walter H. Peters, commissioner, of New Orleans.

United States district court, southern district of New York.

MAGIN PUIG and others, libellants,
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c.,
JAS. W. PHILLIPS, cl'm't and respond'ts.

Depositions of witnesses produced, sworn, and examined the twenty-third day of September, in the year of one thousand eight hundred and fifty-seven, at my office, No. 50 Camp street, in the city of New Orleans, parish of Orleans, and State of Louisiana, before me, Walter Hicks Peters, commissioner named, under and by virtue of a commission issued out of the United States district court for the southern district of New York, in a certain cause therein depending and at issue between Magin Puig and others, libellants, against the ship James Guthrie, her tackle, &c.; James W. Phillips, claimant and respondent, as follows:

Fernando de Francisco Martin, a resident of the city of New Orleans, State of Louisiana, mercantile clerk, aged forty-three
222 years and upwards, being duly and publicly sworn, pursuant

to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows:

To the 1st interrogatory he saith: My name is Fernando de Francisco Martin. I am a mercantile clerk and book-keeper; and reside in the city of New Orleans, State of Louisiana.

To the 2d interrogatory he saith: Yes; I have known them since the year 1848.

To the 3d interrogatory he saith: I know that there is a ship by the name of the James Guthrie; I have known this since March, 1856. I never saw the ship.

To the 4th interrogatory he saith: The ship was in Mobile at the period designated; she was about sailing for Ferrol, Spain. At that time I knew nothing of her ownership, but since then have learned that she was owned by Page & Allen, of Portsmouth, Va., or rather that they were two of her owners. Captain Stephen Chase was master of the Guthrie.

To the 5th interrogatory he saith: I do not know when the ship arrived in Mobile; how long she remained there; nor the day
223 of her departure. Her consignee in Mobile was Joseph E. Murrel. Her destination, as I have before said, was Ferrol, in Spain.

To the 6th interrogatory he saith: I have no knowledge of anything sought to be elicited by this interrogatory.

To the 7th interrogatory he saith: I do not know, and cannot answer.

To the 8th interrogatory he saith: I do not know whether he applied to any parties for such loan for such purpose or not.

To the 9th interrogatory he saith: I am and was the book-keeper of Puig, Mir & Co. Said firm made no advances to Capt. Chase, except by purchasing the captain's disbursements bill, amounting to four thousand dollars, $4,000, drawn by him on the 22d March, 1856, on Abarzuza Brothers, of Cadiz, against his freight money. This bill was bought by Puig, Mir & Co.; endorsed by them, and sold in this market, and afterwards returned protested for non-acceptance. When Capt. Chase, and owners of his ship, were advised of the protest and of the fact, by Puig, Mir & Co., who transmitted them their claim for the amount of Capt. Chase's said protested bill and damages, amounting to four thousand four hundred and seven $\frac{50}{100}$ dollars, under date 24th of July, 1856. When Puig, Mir & Co. bought
224 said disbursement bill, it was, and they (P. M. & Co.) understood that it was drawn by Capt. Chase for the disbursement of his ship, the James Guthrie, and consequently bought and sold it with their endorsement, upon the strength of its being a disbursement bill of said ship James Guthrie, and not on the individual credit of Capt. Stephen Chase. Said bill was transmitted by Joseph E. Murrell, consignee of the James Guthrie in Mobile, to Puig, Mir & Co., who bought, endorsed, and sold the same.

To the 10th interrogatory he saith: I repeat that Puig, Mir & Co. bought the bill as Capt. Chase's disbursement bill, expecting all the liens which a disbursement bill carries with it. It was not given,

taken, or received by P., M. & Co. in discharge or satisfaction of a lien on the ship, but was purchased with the idea that it was amply secured by the lien that went with it.

To the 11th interrogatory he saith: I know nothing on the subject.

To the 12th interrogatory he saith: Puig, Mir & Co. wrote Capt. Chase at Key West, notifying him of the protest of the bill, as mentioned in interrogatory 9th, and also wrote to Page & Allen, of Portsmouth, Va. The exhibits hereto annexed, and marked A and
225 B, are copies of said letters. The bill of exchange, as well as copy of answer of Capt. Chase to the letter of Puig, Mir & Co., are, I believe, on file with the documents in this suit in court in New York.

To the 13th interrogatory he saith: All the papers concerning this affair were transmitted by Puig, Mir & Co. to J. A. Manning, esq'r, their attorney at New York, and, I presume, are on file. The exhibit hereto annexed and marked C, is copy of letter of Abarzuza Brothers, or so much as relates to the present transaction.

To the 14th interrogatory he saith: A letter from Capt. Chase addressed to Abarzuza Brothers, was transmitted to Puig, Mir & Co., by J. E. Murrell, consignee of said Chase, as aforesaid, to be forwarded by the first mail and by the quickest conveyance to said Abarzuza Brothers, of Cadiz. This letter being sealed, I do not, of course, know what the contents were; but Puig, Mir & Co. were informed by said Murrell that it was Captain Chase's "duplicate letter" advising his said bill drawn against the freight of the ship James Guthrie, and giving orders to his consignees in Cadiz, Abarzuza Bro's, to insure his freight to the amount of his said bill. The said "duplicate letter" of Captain Chase was received here about the 24th or 25th of March, 1856, and was immediately forwarded to Cadiz by the
226 regular European mail, via New York.

To the 15th interrogatory he saith: Puig, Mir & Co. wrote afterwards on the 30th March, 1856, to Abarzuza Brothers that Captain Chase, of the ship James Guthrie, by the previous weekly European mail, had drawn on them a bill for the disbursement of his ship, and the amount of which bill he (Capt. Chase) had written them to insure.

To the 16th interrogatory he saith: Puig, Mir & Co. received a letter dated Cadiz, 28th April, 1856, from Abarzuza Brothers, saying, that as freight money could not be insured in Spain, they had transferred the order to Mr. Anselmo de Arrogave, of London, as per annexed extract in exhibit "C;" but when their order to effect such insurance reached London, the news of the loss of the James Guthrie had already reached there, as per the extract marked exhibit C, which contains extracts of said Arrogave's letter to Puig, Mir & Co., dated London, 9th May, 1856.

To the 17th interrogatory he saith: I can state nothing further except that Puig, Mir & Co. bought Capt. Chase's bill of exchange for $4,000, as drawn against the freight of the said ship James Guthrie, under his command, for disbursements of his said ship in
227 good faith, expecting it to be paid, and in default thereof, as

with all captains' disbursement bills, the ship owners were bound for the amount and damages.

To the 1st cross-interrogatory he saith: At the time Puig, Mir & Co. bought the bill referred to, the owners of the ship were unknown to them; they have since learned that she was owned by Page & Allen and other parties in New York, but I do not know this of my own knowledge.

To the 2d cross-interrogatory he saith: I know nothing about repairs in Mobile to the James Guthrie.

To the 3d cross-interrogatory he saith: Not having undertak*ing* to state the means, and having no knowledge of what is sought to be elicited in this question, I have no answer thereto.

To the 4th cross-interrogatory he saith: Nothing having occurred of the nature which answer to this interrogatory seeks to explain, I have nothing to say.

To the 5th cross-interrogatory he saith: Messrs. Puig, Mir & Co. bought Capt. Chase's bill of exchange, for $4,000, as being a disbursement bill, drawn against his freight, which fact they were assured of by the consignee in Mobile, J. E. Murrell; they made no advances to Capt. Chase of any nature that I know of.

228 To the 6th cross-interrogatory he saith: The bill of exchange was bought by Puig, Mir & Co., as stated in my answer to the 10th direct interrogatory, and without knowledge of any agreement or agreements to which this interrogatory refers.

To the 7th cross-interrogatory he saith: Not having stated such, I have nothing to answer.

To the 8th cross-interrogatory he saith: Puig, Mir & Co. reside in New Orleans. They received Capt. Chase's bill about the 23d or 24th March, 1856, from the consignee, Joseph E. Murrell, of Mobile. They allowed for it four thousand dollars, and took it at par; this exchange being the current market rate at that time, and they paid over the proceeds of the bill to J. E. Murrell, consignee in Mobile.

To the 9th cross-interrogatory he saith: The ship James Guthrie was at Mobile, under charter to Mr. Murrell, for a voyage to Ferrol, Spain. I do not know upon what terms Puig, Mir & Co. were interested with said J. E. Murrell in the cargo, but had no interest directly or indirectly with Murrell whatever connected with the present transaction. I am employed in the house of Puig, Mir & Co. as book-keeper. Neither Puig, Mir & Co. or myself have had charge of the disbursements of the ship James Guthrie in Mobile. We

229 do not, therefore, know the amount disbursed, nor when made, except by means of Capt. Chase's bill for disbursements, drawn about the 23d or 22d March, 1856. We do not know the commissions charged, and nothing of charges made to said Chase by his consignee in Mobile, as Puig, Mir & Co. had nothing to do with Capt. Chase's accounts or transactions in Mobile. I have, consequently, nothing to produce or annex, and know nothing beyond what I have stated.

To the 10th cross-interrogatory he saith: I heard that she sailed about the 23d or 25th March, 1856, bound to Ferrol, with a cargo of

taken, or received by P., M. & Co. in discharge or satisfaction of a lien on the ship, but was purchased with the idea that it was amply secured by the lien that went with it.

To the 11th interrogatory he saith: I know nothing on the subject.

To the 12th interrogatory he saith: Puig, Mir & Co. wrote Capt. Chase at Key West, notifying him of the protest of the bill, as mentioned in interrogatory 9th, and also wrote to Page & Allen, of Portsmouth, Va. The exhibits hereto annexed, and marked A and
225 B, are copies of said letters. The bill of exchange, as well as copy of answer of Capt. Chase to the letter of Puig, Mir & Co., are, I believe, on file with the documents in this suit in court in New York.

To the 13th interrogatory he saith: All the papers concerning this affair were transmitted by Puig, Mir & Co. to J. A. Manning, esq'r, their attorney at New York, and, I presume, are on file. The exhibit hereto annexed and marked C, is copy of letter of Abarzuza Brothers, or so much as relates to the present transaction.

To the 14th interrogatory he saith: A letter from Capt. Chase addressed to Abarzuza Brothers, was transmitted to Puig, Mir & Co., by J. E. Murrell, consignee of said Chase, as aforesaid, to be forwarded by the first mail and by the quickest conveyance to said Abarzuza Brothers, of Cadiz. This letter being sealed, I do not, of course, know what the contents were; but Puig, Mir & Co. were informed by said Murrell that it was Captain Chase's "duplicate letter" advising his said bill drawn against the freight of the ship James Guthrie, and giving orders to his consignees in Cadiz, Abarzuza Bro's, to insure his freight to the amount of his said bill. The said "duplicate letter" of Captain Chase was received here about the 24th or 25th of March, 1856, and was immediately forwarded to Cadiz by the
226 regular European mail, via New York.

To the 15th interrogatory he saith: Puig, Mir & Co. wrote afterwards on the 30th March, 1856, to Abarzuza Brothers that Captain Chase, of the ship James Guthrie, by the previous weekly European mail, had drawn on them a bill for the disbursement of his ship, and the amount of which bill he (Capt. Chase) had written them to insure.

To the 16th interrogatory he saith: Puig, Mir & Co. received a letter dated Cadiz, 28th April, 1856, from Abarzuza Brothers, saying, that as freight money could not be insured in Spain, they had transferred the order to Mr. Anselmo de Arrogave, of London, as per annexed extract in exhibit "C;" but when their order to effect such insurance reached London, the news of the loss of the James Guthrie had already reached there, as per the extract marked exhibit C, which contains extracts of said Arrogave's letter to Puig, Mir & Co., dated London, 9th May, 1856.

To the 17th interrogatory he saith: I can state nothing further except that Puig, Mir & Co. bought Capt. Chase's bill of exchange for $4,000, as drawn against the freight of the said ship James Guthrie, under his command, for disbursements of his said ship in
227 good faith, expecting it to be paid, and in default thereof, as

with all captains' disbursement bills, the ship owners were bound for the amount and damages.

To the 1st cross-interrogatory he saith: At the time Puig, Mir & Co. bought the bill referred to, the owners of the ship were unknown to them; they have since learned that she was owned by Page & Allen and other parties in New York, but I do not know this of my own knowledge.

To the 2d cross-interrogatory he saith: I know nothing about repairs in Mobile to the James Guthrie.

To the 3d cross-interrogatory he saith: Not having undertak*ing* to state the means, and having no knowledge of what is sought to be elicited in this question, I have no answer thereto.

To the 4th cross-interrogatory he saith: Nothing having occurred of the nature which answer to this interrogatory seeks to explain, I have nothing to say.

To the 5th cross-interrogatory he saith: Messrs. Puig, Mir & Co. bought Capt. Chase's bill of exchange, for $4,000, as being a disbursement bill, drawn against his freight, which fact they were assured of by the consignee in Mobile, J. E. Murrell; they made no advances to Capt. Chase of any nature that I know of.

228 To the 6th cross-interrogatory he saith: The bill of exchange was bought by Puig, Mir & Co., as stated in my answer to the 10th direct interrogatory, and without knowledge of any agreement or agreements to which this interrogatory refers.

To the 7th cross-interrogatory he saith: Not having stated such, I have nothing to answer.

To the 8th cross-interrogatory he saith: Puig, Mir & Co. reside in New Orleans. They received Capt. Chase's bill about the 23d or 24th March, 1856, from the consignee, Joseph E. Murrell, of Mobile. They allowed for it four thousand dollars, and took it at par; this exchange being the current market rate at that time, and they paid over the proceeds of the bill to J. E. Murrell, consignee in Mobile.

To the 9th cross-interrogatory he saith: The ship James Guthrie was at Mobile, under charter to Mr. Murrell, for a voyage to Ferrol, Spain. I do not know upon what terms Puig, Mir & Co. were interested with said J. E. Murrell in the cargo, but had no interest directly or indirectly with Murrell whatever connected with the present transaction. I am employed in the house of Puig, Mir & Co. as book-keeper. Neither Puig, Mir & Co. or myself have had charge of the disbursements of the ship James Guthrie in Mobile. We

229 do not, therefore, know the amount disbursed, nor when made, except by means of Capt. Chase's bill for disbursements, drawn about the 23d or 22d March, 1856. We do not know the commissions charged, and nothing of charges made to said Chase by his consignee in Mobile, as Puig, Mir & Co. had nothing to do with Capt. Chase's accounts or transactions in Mobile. I have, consequently, nothing to produce or annex, and know nothing beyond what I have stated.

To the 10th cross-interrogatory he saith: I heard that she sailed about the 23d or 25th March, 1856, bound to Ferrol, with a cargo of

naval timber for the Spanish government, shipped by said Murrell for his joint account with Puig, Mir & Co., consigned to Abarzuza Brothers, Cadiz. I do not know the amount of her freight.

To the 11th cross-interrogatory he saith: I know nothing beyond what I have stated in answer to the 14th direct interrogatory.

To the 12th cross-interrogatory he saith: I know nothing of a previous charter or voyage of the said ship, or of anything connected with her previous to the voyage to Ferrol, Spain.

To the 13th cross-interrogatory he saith: I can say nothing more in answer to this interrogatory beyond what is contained in
230 my answers to the direct interrogatories 12 and 13. Exhibit D, hereto annexed, is original letter of Messrs. Page & Allen, in answer to that of Puig, Mir & Co., a copy of which is hereto annexed as Exhibit A.

To the 14th cross-interrogatory he answers: The letter referred to was received by Puig, Mir & Co., from J. E. Murrell, of Mobile, about the 24th or 25th March, 1856, and was mailed to Abarzuza Brothers immediately, by the regular European mail, *via* New Orleans, which is the usual mode here of transmiting our letters to Spain. Having mailed said duplicate letter the very day on which it was received, it could not have been earlier.

To the 15th cross-interrogatory he saith: Puig, Mir & Co., were interested half in the cargo, and being interested in the cargo, I presume they were in the charter, but I do not know the latter fact.

To the 16th cross-interrogatory he saith: No person whatever, except Puig, Mir & Co., is now, or was at the time this suit was commenced, interested in the claim involved in this suit or in the bill of exchange referred to in those interrogatories.

FERN'DO DE FRAN'CO MARTIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn this 23d day of Sept'r, 1857, before me.

WALTER H. PETERS,
Commissioner.

231 Juan Graw, a resident of the city of New Orleans, State of Louisiana, mercantile clerk, thirty-seven years of age and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the libellants, did next depose and say as follows:

To the 1st interrogatory he saith: My name is Juan Graw; I am an accountant and clerk in the house of Puig, Mir & Co.; I reside in the city of New Orleans.

To the 2d interrogatory he saith: I have known them since the year 1848, or thereabouts.

To the 3d interrogatory he saith: I am aware that there was a ship called the James Guthrie. I never saw her, but have been aware of it since March, 1856.

To the 4th interrogatory he saith: She was at Mobile at the time referred to, about to sail for Ferrol, Spain. I did not know then

who her owners were, but have learned since that she was owned by Page & Allen, of Portsmouth, Va., in part. She was commanded by Stephen Chase.

To the 5th interrogatory he saith: I cannot say when she arrived, nor how long the ship remained at Mobile, nor the day she left there. Joseph E. Murrell was her consignee, in Mobile. She was destined for Ferrol, Spain.

232 To the 6th interrogatory he saith: I am ignorant of the facts this interrogatory seeks to explain.

To the 7th interrogatory he saith: I do not know. I answer this the same as the last preceding interrogatory.

To the 8th interrogatory he saith: I have no knowledge of his having applied to any one for a loan for the purpose indicated.

To the 9th interrogatory he saith: Puig, Mir & Co. made no advances to Capt. Chase. They purchased the captain's disbursement bill, amounting to the sum of $4,000, which he drew on the 22d March, 1856, on Abarzuza Brothers, Cadiz, against his freight money. Puig, Mir & Co. bought this bill endorsed, and sold it in the market. It was returned to them protested for non-acceptance. They at once advised Capt. Chase and the owners of the protest, and sent the latter their claims for the amount of the bill, charges, damages, &c., say, $4,407 50, under date 24th July, 1856. When Puig, Mir & Co. bought the said bill, they understood it as being drawn by Chase for disbursements of the ship James Guthrie. It was bought and sold as being a disbursement bill of the ship, and not on the strength or belief in the individual credit of Chase. It was received from Mr. Murrell, the consignee, in Mobile, by

233 Puig, Mir & Co., who bought it endorsed and sold it.

To the 10th interrogatory he saith: The bill was bought as a disbursement bill, and as such amply secured in payment by the usual liens. It was purchased, and neither taken or received in discharge, satisfaction, or account of any privilege or lien on the vessel, but upon the presumption that its payment was secure, being for disbursements.

To the 11th interrogatory he saith: I am unable to state.

To the 12th interrogatory he saith: Messrs. Puig, Mir & Co. wrote to Capt. Chase, at Key West, notifying him that the bill was protested, and also wrote to Page & Allen, of Portsmouth, Va. The exhibits annexed hereto, marked respectively A and B, are copies of said letters. Copy of the answer of Chase and the bill of exchange have been forwarded to New York, and are on file with the other documents in this suit, as I believe.

To the 13th interrogatory he saith: All the papers relating to this suit and the documents have been forwarded to the attorney of Puig, Mir & Co., J. A. Manning, at New York, and, I judge, have been filed by him. Exhibit C, annexed, is a copy of extract from letter of Abarzuza Brothers, of so much therein as relates to the

234 present transaction. At the foot is copy of extract from letter of Anselmo de Arrogave.

To the 14th interrogatory he saith: Joseph E. Murrell, the con-

signee of Chase, in Mobile, transmitted to Puig, Mir & Co. a letter of said Chase, directed to Abarzuza Brothers, of Cadiz, to be sent by the first and most expeditious route. I do not know what the letter contained, as it was sealed, but Mr. Murrell informed Puig, Mir & Co., that it was Captain Chase's duplicate letter, advising of the said bill drawn against the freight of said ship James Guthrie, and giving orders to his said consignees, Abarzuza Brothers, to insure his freight to the extent of said bill. This letter was received about the 24th or 25th March, 1856, and was at once forwarded to Cadiz by the regular European mail *via* New York.

To the 15th interrogatory he saith: On the 30th March following, Puig, Mir & Co. wrote to said Abarzuza Brothers, that Capt. Chase had, by the previous European mail, drawn on them bill for the disbursements of his ship, the amount of which, he (Chase) had written them (A. & Brothers) to insure.

To the 16th interrogatory he saith: Puig, Mir & Co. received a letter dated at Cadiz, the 28th April, 1856, from Abarzuza
235 Brothers, saying that they had transferred the order to insure to Mr. A. de Arrogave, of London, as freight money could not be insured in Spain; but the news of the loss of the James Guthrie had reached London simultaneously with the order, as per the extracts from said Arrogave's letter to Puig, Mir & Co., contained in Exhibit C, hereto annexed.

To to the 17th interrogatory he saith: I can only repeat and state that Puig, Mir & Co. bought the bill of Chase for $4,000, as being drawn against the freight of the James Guthrie for disbursements of the ship, supposing that it would be paid, and if not, that the ship and owners, as in the case with all disbursement bills, were liable for the amount with damages, charges, and interest.

To the first-cross interrogatory he saith: Puig, Mir & Co. did not know who the owners were when they bought the bill, but after the purchase learned that she was owned by Page & Allen and others, in New York.

To the second cross-interrogatory he saith: I have no knowledge of the repairs to the ship in Mobile.

To the 3d cross-interrogatory he saith: I refer to answer to 2d cross-interrogatory.

To the 4th cross-interrogatory he saith: No application for a loan having been made by him, and none having been made
236 by Puig, Mir & Co., I have nothing to say.

To the 5th cross-interrogatory he saith: No advances were made by Puig, Mir & Co. to Capt. Chase. They bought his bill of exchange for $4,000 as a disbursement bill, drawn against his freight upon the recommendation of J. E. Murrell, of Mobile, consignee there of the ship.

To the 6th cross-interrogatory he saith: The bill was purchased under no agreements, but as a disbursement bill, with the presumption that its payment was secured by the usual privilege and liens.

To the 7th cross-interrogatory he saith: I have not so stated, and have no answer.

To the 8th cross-interrogatory he saith: The libellants reside in this city. They received the bill from Joseph E. Murrell, of Mobile, Ala., about the 23d or 24th of March, 1856. They allowed four thousand dollars for it—what its face called for, this being the current exchange in the market at the time, and they paid the proceeds to said Joseph E. Murrell, at Mobile.

To the 9th cross-interrogatory he saith: The James Guthrie was at Mobile, under charter to Joseph E. Murrell for a voyage to Ferrol, Spain, but the terms I do not know. Messrs. Puig, Mir & Co. had an interest in the cargo with said Murrell, but were not con-
237 nected or had any interest whatever with said Murrell, in the bill of exchange or the transactions out of which this suit arose. I am an accountant and clerk in the house of Puig, Mir & Co. No one in the house had charge of any disbursements of the ship James Guthrie, in Mobile. I do not know what amount was disbursed, or the terms thereof, except an inference as to the aggregate, by means of Capt. Chase's disbursement bill of the 22d or 23d March, 1856. I know nothing of commissions charged or of any charges by said Murrell against the ship or Chase. Puig, Mir & Co. had nothing to do with Capt. Chase's accounts or transactions in Mobile. I have nothing to annex or produce, and have stated as fully as I can.

To the 10th cross-interrogatory he saith: I understood she sailed about the 23d or 24th March, 1856, bound to Ferrol, Spain, with a cargo of naval timber, shipped by said Murrell on joint account with Puig, Mir & Co. I do not know the amount of her freight or charter money. She was consigned to Abarzuza Brothers, Cadiz, Spain.

To the 11th cross-interrogatory he saith: I have stated, as far as I know or am able, in the 14th interrogatory, direct.

To the 12th cross-interrogatory he saith: I know nothing, whatever, connected with the ship prior to the voyage herein referred to.

238 To the 13th cross-interrogatory he saith: I have stated, in answers to the 12th and 13th direct interrogatories, to the extent of my knowledge. Exhibit D is the original letter of Page & Allen, in answer to that of Puig, Mir & Co., (copy of which is hereto annexed as exhibit A.)

To the 14th cross-interrogatory he saith: The letter referred to was received from Murrell by Puig, Mir & Co. about the 24th or 25th March, 1856. It was mailed to Abarzuza Brothers, at once, per the regular European mail, via New York. This is the usual way of sending our letters to Spain. It was mailed here on the day that it was received. We could not have mailed it at an earlier time.

To the 15th cross-interrogatory he saith: I judge that Puig, Mir & Co. were interested in the charter, (but I do not know it,) inasmuch as they were interested in the cargo to the extent of one-half.

To the 16th cross-interrogatory he saith: No one, whatever, is now, or was at the time that this suit was instituted, interested in the claim involved therein, or in the bill of exchange, save and except Puig, Mir & Co.

JUAN GRAW.

Examination taken, reduced to writing, and by the witness
239 subscribed and sworn this 23d day of September, A. D. 1857, before me—

WALTER H. PETERS,
Commissioner.

Fees for taking this testimony, $30, paid by Puig, Mir & Co. N. O., 23d Sept., 1857.

WALTER H. PETERS,
Commissioner.

240 EXHIBIT A.—*Walter H. Peters, commissioner.*

EXHIBIT A.

Messrs. PAGE & ALLEN, *Portsmouth, Va.:*

NEW ORLEANS, 3*d June*, 1857.

GENTLEMEN: The object of the present is to inform you that a bill of exchange, No. 292, dated at Mobile, March 22d, 1856, at 60 d's sight, drawn by Stephen Chase, of your ship "James Guthrie," for the disbursement of said ship, at the port of Mobile, upon Abarzuza Hermanos, of Cadiz, payable to our order and by us negotiated, amounting to $4,000—say four thousand dollars, has been protested for non-acceptance as against the drawer, and we hereby notify you also, as owners of said ship "James Guthrie," that we look to you for the amount of Captain Chase's said bill of exchange, with damages and interest.

Asking your attention to this matter at your earliest convenience.

We remain your,

(Signed) PUIG, MIR & CO.

Capt'n STEPHEN CHASE,
Of the ship James Guthrie, Key West.:

NEW ORLEANS, 3*d June*, 1856.

SIR: The object of the present is to inform you that your bill of exchange, No. 292, dated at Mobile, March 22d, 1856, at 60
241 d's sight, drawn to our order upon Messrs. Abarzuza Herm's, of Cadiz, for $4,000, four thousand dollars, has been protested for non-acceptance against you as drawer, and we hereby notify you that we look to you, the ship, and her owners, to whom we have written for the amount of your said bill of exchange, with interest and damages, and we shall be glad to hear from you in reference thereto, at your earliest convenience.

Your obedient servants,

(Signed) PUIG, MIR & CO.

At the execution of a commission for the examination of witnesses between Magin Puig and others, libellants, and the ship James Guthrie, her tackle, &c., James Phillips, claimant and respondent, this

paper writing, marked Exhibit A, being copy of two letters, one to Page & Allen, and the other to Captain Stephen Chase, was produced and shown to Fernando de Francisco Martin, and Juan Graw, and by them deposed unto at the time of the examination before me.

FERN'DO DE FRAN'SCO MARTIN.
JUAN GRAW.

WALTER H. PETERS,
Commissioner.

242 EXHIBIT B.

NEW ORLEANS, 24 *July*, 1856.

GENTLEMEN: In answer to our letter of 3d June last, we have duly received yours 14th of same month, informing us merely that, having advised Capt'n Chase, of the "James Guthrie," his draft had been protested in Cadiz, you await his reply.

We have just received the protest for non-acceptance of said draft on Messrs. Abarzuza Brothers, of Cadiz, given by Capt'n Chase for his disbursements made for account of your ship "James Guthrie," which draft we negotiated with our endorsement, and is protested for non-acceptance for Capt. Chase account, as per protest enclosed, and on the return of the draft we shall look to you, as the owners of said ship, as well as to Capt. Chase, for payment, as follows:

Principal of said draft	$4,000 00
Charges of protest	7 50
10 per cent. damages on principal	400 00
Amounting to	4,407 50

Say forty-four hundred and seven $\frac{50}{100}$ dollars, which you will please pay to the order of our friend, Mr. Jos. E. Murrell, of Mobile, who recommended Capt. Chase's bill to us.

As we do not know where to address Capt. Chase, we beg
243 of you, as his agents, to inform him of all that has occurred with his said draft in Cadiz.

We thank you for the vessel you recommend to us as suitable for the lumber trade, but at this moment we are not in need of any.

Your obedient servants,
(Signed) PUIG, MIR & CO.

Messrs. PAGE & ALLEN, *Portsmouth.*

At the execution of a commission for the examination between Magin Puig and others, libellants, and the ship James Guthrie, her tackle, &c., James Phillips, claimant and respondent, this paper writing was produced and shown to Fernando de Francisco Martin, and Juan Graw, and by them deposed unto at the time of the examination before me.

FERN'DO DE FRAN'CO MARTIN.
JUAN GRAW.

WALTER H. PETERS,
Commissioner.

EXHIBIT "C."

Extract of Abarzuza Brothers' letter to Puig, Mir & Co., dated in Cadiz, 28th April, 1856.

Ex. C.

El capitan de la James Guthrie, Stephen Chase, nos escribe con fecha 22 de Marzo en Mobile preoveniendonos que su burque
244 que daba despachado en aquel dia con cargamento de 111 perchas y otras maderas pr. el Ferrol.

Nos avisa al mismo tiempo que p'a cubier sus desom bolsus per gastos durante su estada en puerto ha girado v. cargo $4,000 (decimos cuatro mil pesos fuertes) *a* 60 d. ata om de V's y nos da orden de efectuar el seguro de d'ha secura.

Con arreglo a muestras legers el flete no se eroga lita la fiel entrega de la mercantia, y per lo tanto no pudiendo aceptar esta letra pr. C– del capitan lo haremos baza protesto pr. honor de la firma de V's medicante apareceran en ella como primeros endorsantes sui perjuicio de cindour el veur bolso tambien de cuenta de V's con el importe de los fletes que ha depagairse su el Ferrol.

El seguro no hemos provido efectuarlo en esta porque utas legro no consienton seguro S'or fletes y p'a hacerlo realizable hubiera sido preciso que en Mobila habiesen estendido un contrato depres tamo a la gruesa.

Para hacer cuanto este de uta parte a fur de poner a cubierto estos interesses hemos tras pasado la orden a su amigo de V's D'n Anselmo de Arrogave p'a que efectue este seguro se le es possible encargan dole de a V's aviso immediato p'a su gobierno.

(Signed) ABARZUZA BROTH'RS.

245 *Extract of a letter of Anselmo de Arrogave, esq'r, to Puig, Mir & Co., dated London, 9th May, 1856.*

Incluyo una carta de los S'rs Abarzuza Herm's de Cadiz para V's dichos S'ne me dieron orden para a segurar $4.000 per parte del flete del burque "James Guthrie" de Mobila a Ferrol, pero sabiendose en esta los contra tiempos que ha tenido dicho bario p'r esus aguas o mas bien dicho p'r esus piedras no he provido conseguir el hacer el seguro de dicho viesgo lo que servisa a V'n de gobierno.

(Signed) ANSELMO DE ARROGAVE.

At the execution of a commission for the examination of witnesses between Magin Puig and others, libellants, and the ship James Guthrie, her tackle, &c., James W. Phillips, claimants and respondents, this paper writing was produced and shown to Fernando de Francisco Martin and Juan Graw, and by them deposed unto at the time of the examination before me.

WALTER H. PETERS,
Commissioner.

JUAN GRAW.
FERN'DO DE FRAN'CO MARTIN.

246 EXHIBIT D.

PORTSMOUTH, VA., *June 14th*, 1856.

GENTS.: Yours of June 3d was duly rec'd. We have advised Capt. Chase, of the James Guthrie, that his bill is returned under protest, and await his reply.

As we believe you are constantly making shipments of timber across the Atlantic, which requires very strong vessels to convey it safely, we beg to recommend to you a vessel which we have now on the stocks, built of live oak and white oak, and nearly ready to launch. She is built of extra heavy materials and strongly fastened; is single deck; 127 ft. long, 30 wide, and 11 hold; upwards of 400 tons register, with fine deck-room for timber.

We built her expressly to suit the timber trade, and think, if you wish a vessel for that business, she will suit you.

We remain, very resp'y, your ob't serv'ts,

PAGE & ALLEN.

Messrs. PUIG, MIR & Co.

At the execution of a commission for the examination of witnesses between Magin Puig and others, libellants, and the ship James Guthrie, her tackle, &c., James W. Phillips, claimant and respond-
247 ent, this paper writing was produced and shown to Fernando de Francisco Martin and Juan Graw, and by them deposed unto at the time of the examination before me.

FERN'DO DE FRAN'CO MARTIN
JUAN GRAW.

WALTER H. PETERS,
Commissioner.

248 *Extract from the Code of Alabama*, § 1,437.

The rate of damage, by the laws of Alabama, is fifteen per cent. on protested bills of exchange drawn in Alabama on Spain.

249 The claimants of the ship James Guthrie puts in evidence the following testimony:

1. Stipulation to admit evidence.
2. Bill of sale from Page & Allen to Phillips. Record of bill of sale.
3. 2d bill of sale from Page & Allen to Phillips. 2d record of bill of sale.
4. Letter from Mir & Co. to Page & Allen.
5. Letter from Capt. Chase to Mir & Co.
6. Protest of Capt. Chase.

250 *Evidence for claimants.*

U. S. district court, so. dist. New York.

MAGIN PUIG *et al.*
vs.
THE SHIP JAMES GUTHRIE, &c., and JAMES W. PHILLIPS.

The libellants in this cause stipulate to admit in evidence the following facts without further proof than this stipulation, that is to say:

That the James Guthrie, the ship mentioned in the pleadings, remained at Key West from the 12th day of April, 1856, until some time in the month of July, in that year; that on the 27th of said July the said ship arrived at the port of New York; that she remained at New York from that day until the 22d of August, 1856; that on the day last named she sailed from New York for St. John's, New Brunswick, and from there, shortly thereafter, sailed for England; and on the 26th of January, 1857, again arrived at New York from Liverpool, England; but the libellants do not herein admit that they were cognizant of the locality of said ship at any period, from the time of her said departure from Key West, until the time of her said
251 arrival at the port of New York, on the said 26th day of January, 1857.

And further, it is understood the annexed copy of protest of Captain Chase and others, made at Key West on the 16 of April, 1856, be read in evidence.

Dated New York, 15 Dec'r, 1859.

J. A. MANNING,
Proctor for Libellants.

Endorsed: 14, 62. U. S. district court. Magin Puig *et als. vs.* The ship James Guthrie, &c. Libellant's stipulation to admit in evidence facts, &c.

Evidence for claimants.—Bill of sale of registered vessel.

To all to whom these presents shall come, greeting:

Know ye that we, William R. Page and A. L. Allen, of Portsmouth, State of Virginia, co-partners, owners of thirty thirty-seconds of the ship or vessel called the James Guthrie, of Portsmouth, of the burthen of $749\frac{7}{95}$ tons, or thereabouts, for and in consideration of the sum of one dollar, lawful money of the United States of America, to us in hand paid before the sealing and delivering of these presents, by James W. Phillips, of the city, county, and State of New York, the receipt whereof we do hereby acknowledge and are therewith fully satisfied, contented, and paid; have bargained and sold, and by these presents do bargain and sell, unto the said James W. Phillips, his executors, administrators, and assigns, twenty thirty-seconds of the said ship or vessel, together with twenty thirty-seconds the mast, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appertaining and belonging. The certificate of the registry of which said ship or vessel is as follows, to wit:

No. 43. Permanent.

In pursuance of an act of the Congress of the United
253 States of America, entitled "An act concerning the registering and recording of ships or vessels"—

William R. Page, of Portsmouth, State of Virginia, having taken or subscribed the oath required by the said act, and having sworn that he, together with A. L. Allen, of same place, tradesmen, trading under the firm of Page & Allen, owning 30-32; John E. Doyle, of Norfolk City, and State of Virginia, is owner of 1-32; and Stephen Chase, of New York, 1-32, all of the United States, and the owners of the ship or vessel called the James Guthrie, of Portsmouth, whereof Stephen Chase is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Portsmouth, State of Virginia, in year 1854, as appears by the certificate of masters carpenters A. L. Allen, dated Portsmouth, 1st November, 1854, and Dennis Dawley, surveyor of the port of Norfolk and Portsmouth, having certified that the said ship or vessel has two decks, and three masts, and that her length is one hundred fifty-six feet; her breadth thirty-two feet three 1-4 in.; her depth, sixteen feet one 5-8 in.; and that she measures seven hundred and forty-nine $\frac{7}{95}$ tons;
and that she is a ship, has a round stern and round tuck; no
254 gallery; billet-head. And the said William R. Page having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said ship has been duly registered at the port of Norfolk and Portsmouth.

Given under our hands and seals at the port of Norfolk and Portsmouth, this 1st day of Nov., in the year one thousand eight hundred and fifty-four; to have and to hold the said twenty thirty-seconds of said vessel and appurtenances thereunto belonging unto him the said James W. Phillips, his executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him the said James W. Phillips, his executors, administrators, and assigns forever. And we, the said William R. Page and A. L. Allen, have, and by these presents do promise, covenant, and agree for ourselves, our heirs, executors, administrators, to and with the said James W. Phillips, his heirs, executors, administrators, and assigns, to warrant and defend the said twenty thirty-seconds of said vessel, and all the other before-mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof we, the said William R. Page and A.
255 L. Allen, have hereunto set our hands and seals, this seventh day of August, in the year of our Lord one thousand eight hundred and fifty-six.

W. R. PAGE. [L. S.]
A. L. ALLEN. [L. S.]

Sealed and delivered in the presence of—
DAVID L. TURNET.

U. S. OF AMERICA, STATE OF VIRGINIA.
County of Norfolk, to wit:

Personally appeared before me, a notary public in and for the county aforesaid, duly commissioned and qualified, Willian R. Page, whose signature is to the foregoing instrument, and acknowledged the same to be his act and deed. Witness my hand and the seal of my office, this eleventh day of August, 1856.

HOLT WILSON, JR.,
Notary Public.

County of Norfolk.
Holt Wilson, Jr.
Seal.
Va.]

CITY AND COUNTY OF NEW YORK, *ss:*

On the thirteenth day of August, one thousand eight hundred and fifty-six, before me came Amos L. Allen, to me known to be the individual described in and who executed the within instrument, and acknowledged that he executed the same,

N. C. EVERETT,
Comm'r of Deeds.

256 James Guthrie.

CUSTOM-HOUSE, *New York, Aug't* 16, '56.

Rec'd for record at 2.25 p. m., and recorded in book of B. S. of R'y No. 17, page 129.

G. RUSSELL, *Clerk.*

W. D. R.

J. WILSON, JR., *D. Coll'r.*

Aug't 16, '56, 25 m. p. 2.

257 *Bill of sale of registered vessel.*

To all to whom these presents shall come greeting:

Know ye that we, William R. Page and A. L. Allen, carpenters, of Portsmouth, State of Virginia, and owners of $\frac{1}{2}$'nds of the ship or vessel called the James Guthrie, of the burden of 749$\frac{5}{95}$ tons or thereabouts, for and in consideration of the sum of one dollar, lawful money of the United States of America, to us in hand paid before the sealing and delivering of these presents by James W. Phillips, of the city, county, and State of New York, the receipt whereof we do hereby acknowledge, and are therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargin and sell unto the said James W. Phillips, his executors, administrators, and assigns, eleven thirty-seconds of the said ship or vessel, together with eleven thirty-seconds the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto appurtaining and belonging. The certificate of the registry of which said ship or vessel is as follows, to wit:

No. 506.—In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and

recording of ships or vessels," James W. Phillips, of the city,
258 county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that he is the owner of $\frac{8}{8}$, William R. Page and A. L. Allen, $\frac{1}{8}\frac{1}{2}$, copartners of Portsmouth, and John E. Doyle, $\frac{1}{3}\frac{1}{2}$, of Norfolk, State of Virginia, are the owners of the ship or vessel called the James Guthrie, of New York, whereof Americus V. Wiatt is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Portsmouth, State of Virginia, in the year 1854, as per register No. 501, issued at this port, August 20, 1856, now cancelled, property changed; and said register having certified that the said ship or vessel has two decks and three masts, and that her length is one hundred and fifty-six feet; her breadth thirty-two feet three and one-quarter inches; her depth, sixteen feet one and five-eighths inches; and that she measures seven hundred forty-nine $\frac{7}{9}\frac{9}{5}$ tons; and that she is a ship, has a round stern, and round tuck, and a billet-head; and the said James W. Phillips, having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said ship has been duly registered at the port of New York.

Given under our hands and seals at the port of New York, this
22d day of August, in the year one thousand eight hundred
259 and fifty-six; to have and to hold the said eleven thirty-seconds and appurtenaces thereunto belonging unto him the said James W. Phillips, executors, administrators, and assigns, to the sole and only proper use, benefit, and behoof of him the said James Phillips, executors, administrators, and assigns for ever. And we, the said W. R. Page and A. L. Allen, have and by these presents do promise, covenant, and agree, for ourselves, heirs, executors, administrators, to and with the said James W. Phillips, heirs, executors, administrators, and assigns, to warrant and defend the said eleven thirty-seconds, part of said ship, and all the other before mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, we, the said W. R. Page and A. L. Allen, have hereunto set our hands and seals this twentieth day of September, in the year of our Lord one thousand eight hundred and fifty-six.

W. R. PAGE. [L. S.]
A. L. ALLEN. [L. S.]

Sealed and delivered in the presence of—
J. W. CAMMERDEN, jr.

STATE OF NEW YORK, *ss:*

Know all men that, on the day of the date hereof, personally appeared W. R. Page and A. L. Allen, and acknowledged the
260 within bill of sale to be their act and deed.

Given under my hand and seal of office, this 26th Sept., 1856.

[SEAL.] J. BEN. WOOD, *Not. Pub.*

James Guthrie.

CUSTOM-HOUSE.
New York, Sept. 26, '56.

Rec'd for record at 12.30 p. m., and recorded in book of R. S. of A. V., No. 17, page 236.

G. RUSSELL, *Clerk.*
J. WILSON, *D. Coll'r.*

Sept. 26, '56. ½ p't 12.

261 (Copy.—Per mail.)

NEW ORLEANS, *24th July*, 1856.

GENTLEMEN: In answer to our letter of the 30 June last, we have duly received yours, 14th of same month, informing us merely that having advised Capt. Chase, of the ship James Guthrie, his draft had been protested in Cadiz, you await his reply.

We have just received the protest for non-acceptance of said draft on Messrs. Abarzuza Brothers, Cadiz, given by Capt. Chase for his disbursements, made for account of your ship, James Guthrie, which draft we negotiated with our endorsement, and is protested for non-acceptance for Capt. Chase's account, as per protest inclosed, and on the return of the draft we shall look to you, as the owners of said ship, as well as to said Capt. Chase, for payment, as follows:

Principal of the draft	$4,000 00
Charges of protest	7 50
10 p. c. damages on principal	400 00
	$4,407 50

Say *forty-four hundred* and seven $\frac{50}{100}$ dollars, which you will please pay to the order of our friend Mr. Joseph E. Murrell, of Mobile, who recommended Capt. Chase's bill to us.

262 As we do not know where to address Capt. Chase, we beg of you, as his agents, to inform him of all that has occurred with his said draft on Cadiz.

We thank you for the vessel you offer to us as suitable for the lumber trade, but, at this moment, we are not in need of any.

We remain, gentlemen, your obedient servants.

(Signed) PUIG, MIL & CO.

Messrs. PAGE and ALLEN.
Portsmouth, Va.

263 (Copy.)

Enrolmen of Guimarais.

KEY WEST, *June 25, 1856.*

GENT'N: I am surprised to hear that the bill for the disbursements on ship James Guthrie has been protested.

If Mr. Murrell had done his duty as consignee of the ship, this

would not have happened. My letter of advice should have been forwarded by the next mail, thereby giving the consignees of the cargo time to cover the amount by insurance: as it is, I presume, my letter of advice, and the news of the loss arrived in Spain by the same mail. In regard to the bill, I learn from the owners of the ship, Messrs. Page & Allen, of Portsmouth, Va., have informed me that you have already corresponded with them on the subject, and I presume they will attend to it, but I shall always consider Mr. Murrell to blame for not having the affair properly attended to.

The cargo of the James Guthrie will be sold by order of the admiralty court on the 27th inst.; and the ship, having been temporarily repaired, will sail for a northern port in the U. S. in a few days.

I am, respectfully, y'rs,

(Signed) STEPHEN CHASE.

Messrs. Puig, Mir & Co., *New Orleans.*

264 *Evidence for libellants.—Protest of Captain Chase.*

United States of America, State of Florida.

Monroe County, Key West, ss:

On this fourteenth day of April, in the year one thousand eight hundred and fifty-six, before me, Alexander Patterson, a notary public, duly commissioned and qualified, for the State and county aforesaid, came and appeared Stephen Chase, master of the ship James Guthrie, of Portsmouth, Va., of the burden of seven hundred and forty-nine tons, or thereabouts, who made before me, the aforesaid notary, a note in entry of protest in due form.

And on this 16th day of April, same year, again came and appeared the said Stephen Chase, master, John D. Whidden, mate, Philip Davis, second mate, John Peterson, boatswain, B. Travis, Sam'l Simon, Jacob Yates, and Edward Hinson, seamen, all of the aforesaid ship, who, being by me, the aforesaid notary, solemnly and severally sworn, do depose and say: That they set sail on board the aforesaid ship at the port of Mobile, on the twenty-sixth of March now last past, having on board a cargo of spars, timber, &c., and bound for Ferrol, in Spain, and that nothing material occurred during
265 the voyage worthy of note here, until Saturday, the 29th day of March, 1856, comes in with fine breezes and hazy sky. At 2 p. m. touch in colored water; kept a good lookout for the land. At ½ o'clock, the captain being on the topgallant forecastle at the time looking out for the land with the glass—ship running with wind upon the quarter—struck heavily on the Tortugas shoal; at the time she struck just saw the light-house bearing S. Put the wheel to starboard and braced up on the port tack, in hopes to get her off, but did not succeed. At 3½, finding the ship thumped heavily, took in all sail to ease her. Sounded the pumps, and found the ship made no water. At 7 p. m. wrecking sloop Plume anchored out of hail astern of us, and the schooner Flying Arrow close under our lee. The captain declined assistance, in hopes of moderate weather in the morning, so as to be able to carry out an anchor with the ship's boats.

Through the night ship thumped heavily; sounded the pumps every hour, but found she did not make any water to speak of. At 6 p. m. fresh breezes from NE., and heavy sea; called to the nearest wrecker, (Flying Arrow,) and engaged him to carry out an anchor for us; gave him 150 fathoms of chain and starboard anchor, which he carried into four fathoms water and let it go. In dropping down he gave us the end on board, and we commenced heaving in. Ends with
266 fresh breezes and heavy sea, ship thumping hard.

Sunday, March 30, comes in more moderate. From 2 to 5 everybody heaving at the windlass; did not stir her but very little, although we had an extra gang of 25 men from the wreckers. Through the night moderate, ship lying easy. At 6 a. m. sounded 28 inches water in pump well; turned to and pumped her out; all hands heaving on the windlass to day, but did not start her. At 11 a. m. pumped her out again; pumped out sand from the pump well. Ends with light winds, ship lying easy.

Monday, March 31st, comes in with calm weather. This afternoon all hands heaving on the windlass, with an additional gang of 15 men; set the foretopsail and headsails aback; did not start her. Through the night ship thumping but little and making water. At 6 a. m. pumped her out; light breezes from SE., with little sea on. Ends with fine weather; pump attended to.

Tuesday, April 1st, came in with fresh breezes and some sea on. Ship thumping; all hands heaving at the windlass, but could not start her; ship making water; pumps well attended to. This morning sent on shore for dogs, &c., to discharge the spars. Started the water on deck, and put chains, port-anchors, hawsers, &c., and a large quantity of lumber in the shooner alongside, for the purpose
267 of lightering her. Ends moderate; 25 extra men employed at work.

Wednesday, April 2d, came in with fresh breezes from NE., with some sea on. This afternoon heaving on the windlass; brought the anchor home, but did not start the ship. At 4 p. m. found the ship making water fast; kept both pumps going, but could not keep her free. At 5 p. m. sounded pumps, and found 22 inches in them; at 6 p. m. 30 inches; at 7 p. m. 48 inches; slacked the chain and ship keeled to starboard; at 11 p. m. 5 feet of water in pump well. Through the night ship lying easy. This morning, 5 p. m., sounded pumps, and found the leak had stopped, there being but 5 feet water in her; commenced discharging cargo. Put out to-day 2 spars, 9 plank, and 4 sticks timber. An extra gang of men employed from wreckers, 24 in number. Ends with fresh breezes and fine weather; pumps going steady all day, but *but* did not gain on the leak.

Thursday, April 3d, came in with fine weather and moderate breezes from E.NE. From 4 to 6 all hands, with 25 extra men heaving on the windlass, but the anchor came home; turned the ship half a point. From 9 to 10 all hands at the pumps, and sucked her out; 12 men employed to keep the pumps going through the night. First
268 part of the night ship thumping hard; latter part lying more easy. At 6 commenced discharging again. Ends with fine

weather, and calm. Put out 2 spars, 1 stick of timber, and 5 plank; three plank went adrift, and were picked up by the wrecking sloop Globe. In heaving out the spars broke the dog twice, but having a forge and blacksmith on board, wreckers got it mended again at once; also broke two large blocks in heaving them out. Wreckers carried out port-anchor this forenoon, and backed the starboard one with it. Capt. Welsh, the insurance agent, came on board to-day.

Friday, April 4th, came in with fine weather, and calm. All hands heaving on the windlass, with a gang from wreckers of 28 men. At 7 p. m. hove ship off into four fathoms water; stopped heaving and manned the pumps; at 11 p. m. suck her out; set watches for the night; through the night calm. This morning run kedge out and hove up both anchors; at 11 a. m. got under weigh. Ends with light winds and cloudy sky.

Saturday, April 5, came in with light weather, and cloudy. At 4 p. m. the wind struck out from the northward in a squall; clewed down the topsails and hauled courses up; ship commenced leaking fast. At 7 p. m. entered the harbor of Tortugas, and dropped
269 anchor in 7 fathoms water; pumps going all night to keep her free. This morning ran a warp on shore and hauled in alongside the bank. Ends with fine weather and light breezes.

Sunday, April 6th, comes in with fine weather and light breezes. Took the hawser, chains, &c., out of the schooner again. Through the night pumps well attended to; ship making water freely. This forenoon sent pump gear on shore to the blacksmith to be repaired. Captain Chase started for Key West to-day, with underwriter's agent, in schooner Flying Arrow.

Monday, April 7th, came in with fair, cool breezes, and pleasant weather. Pumps well attended to; ship making as much water as ever. At 6 a. m. commenced discharging cargo; took a coil of new 4½-inch rope (Manilla) for falls to discharge with; put out one spar and two sticks timber; to-day ends fine.

Tuesday, April 8th, came in with fresh breezes and fine weather. Put out one spar and three sticks timber to day; broke dog four times and got it repaired again; ship making considerable water; pump going pretty much all the time. On examination found the ship chafed badly outside. Ends with fine weather and fresh breezes.

270 Wednesday, April 9th, came in with fine weather. Government steamer Corwin came from Key West to-day, for the purpose of towing us there; capt. came in her. At 4 p. m. cast off fasts from shore and hove the ship off to her anchor; passed out a new hemp hawser to steamer to tow us up with; hove up, but did not succeed in getting out; the wind freshening from the northward forced us on the bank, where she lay all night, making water freely; pumps well attended to. At 5 a. m. wind fresh from the N. and W.; steamer's men came on board to render assistance; carried out kedge and hauled ship off to it. Ends with a moderate breeze from the N. and W., with fine weather.

Thursday, April 10th, comes in with fresh breezes. Steamer took us in tow again, but did not get us out of the harbor; wind blowing

strong from N.NW.; drifted against the bank again; took pump breaks ashore and had them straightened; ship making water freely; pumps going nearly all the time. New hemp hawser cut up badly, by getting afoul of the rocks, so as to render it unfit for use. Ends with a strong wind from NW., and hazy.

Friday, April 11th, comes in moderate. Steamer took us out today; through the night fresh breezes; pumps required to be
271 kept constantly going to keep her free; towards morning wind hauled to the NE., and blew strong, steamer making but little headway with us. At 7 a. m. saw Sand Key light; wind blowing strong; steamer not able to tow us to windward; was obliged to tack. Ends with fine weather and strong breezes.

Saturday, April 12th, comes in with fresh breezes and hazy sky. Leak still the same. At 11 p. m. came to anchor in 5 fathoms water inside the reef; set the watches for the night. At 5 a. m. hove up anchor, and steamer took us in tow. At 7 a. m. struck heavily on a ledge of rocks, and parted the hawser from steamer; got it out again, and she towed us off into the harbor, where we anchored in four fathoms water. While in the ledge the ship thumped heavily; started rudder up six inches; leak increasing greatly; from 14 to 16 inches per hour.

And the said appearers do further severally declare and attest that the said ship, at the time of her departure from the aforesaid port of Mobile, was tight, staunch, and strong, her hatches well and sufficiently caulked and covered, and was full and sufficiently manned and provided with all things needful and necessary for the
272 said intended voyage; and that the said appearers and ship's company used their utmost endeavors to preserve the said ship and goods of her lading from damage and loss.

Signed STEPHEN CHASE.
" JOHN D. WHIDDEN.
" PHILIP DAVIS.
" JOHN PETERSON.
" B. TRAVIS.
" SAM'L SIMMONS.
" JACOB YATES.
" E. HINSON.

And therefore the said Stephen Chase did declare and protest, and by these presents doth solemnly protest, against all and every person or persons whatsoever, whom it doth, shall, or may concern, and doth declare that all damages, losses, and detriments that have happened to the said ship, and the goods of her lading, are, and of right ought to be borne by the merchants, freighters, insurers, and all others concerned in any manner whatsoever, by way of average or otherwise, the same having occurred as before mentioned, and not by or through the insufficiency of said vessel, the neglect of said appearers, or any of his mariners.

273 This done and protested at Key West, this sixteenth day of April, in the year one thousand eight hundred and fifty-six.

In testimony whereof, I have hereunto set my hand and seal of office, at Key West, the day and year last above men-
[L. S.] tioned.

(Signed) A. PATTERSON,
Notary Public.

Stephen Chase, master; John D. Whidden, mate; Philip Davis, 2d mate; John Peterson, boatswain; B. Travis, Sam'l Simon, Jacob Yates, and Edward Hinson, seamen, all of the aforesaid ship, being by me, the aforesaid notary, solemnly sworn, do depose and say that the foregoing instrument of protest hath been distinctly read over to them, the said deponents, and that the matters and things therein contained are just and true, in all respects, as the same are therein particularly alleged, declared, and set forth.

In testimony whereof, I have hereunto set my hand and seal of office, at Key West, this sixteenth day of April, in the year one thousand eight hundred and fifty-six.

(Signed) A. PATTERSON,
Notary Public.

274 STATE OF FLORIDA,
Monroe County, Key West:

I, Alexander Patterson, a notary public, duly commissioned and qualified for the State and county aforesaid, do hereby certify that the foregoing documents are true and correct copies of the original, as recorded in my notarial records, (B,) page (319.)

In testimony whereof, I have hereunto set my hand and notarial seal, at Key West, this twenty-eighth day of June, in the
[L. S.] year one thousand eight hundred and fifty-six.

(Signed) A. PATTERSON,
Notary Public.

CITY AND COUNTY OF NEW YORK, *ss:*

I, A. Foster Higgins, a public notary in and for said city and county, duly commissioned and sworn, and dwelling in said city, do certify the foregoing to be a correct copy of a certified copy of the protest of the ship James Guthrie, extended before A. Patterson, a notary public, at Key West.

275 In testimony whereof, I have hereunto set my hand and notarial seal, this 23d day of August, one thousand
[L. S.] eight hunded and fifty-six.

A. F. HIGGINS, *N. P.*

276 MOBILE, *June 2d*, 1856.

DEAR SIRS: I wrote you on the 21st ult'o, and soon after received your telegraph despatch, informing me that you expected soon to learn the fate of the "James Guthrie." Please write to me as soon as you learn what has been done with the ship and cargo.

I have had but one letter from Capt. Chase, and that was dated 13th of last month.

I regret to learn that the bill Capt. Chase drew here for $4,000 against his freight was protested.

It seems that, by the laws of Spain or France, freight is not an insurable interest. The parties on whom the Capt. drew wrote to Paris to effect insurance there, and finding that it could not be done, they then wrote London, but the news of the loss of the ship had already reached London. I hope that you may have insured the whole freight, and that you will sustain no loss should the same not be earned. I shall be glad to hear that you have the ship well insured.

If you would authorize me, I would see Messrs. Puig, Mir
277 & Co., who are the holders of the captain's bill, and I might be able to arrange and save you the damages.

Yours, truly,

(Signed) JOS. E. MURRELL.

Messrs. PAGE & ALLEN, *Portsmouth, Va.*

(Copy.)

KEY WEST, *June 25th*, 1856.

GENT'N: I am surprised to hear that the bill for the disbursements on ship "Jas. Guthrie" have been protested.

If Mr. Murrell had done his duty as consignee of the ship, this would not have happened. My letter of advice should have been forwarded by the next mail, thereby giving the consignees of the cargo time to cover the amount by insurance. As it is, I presume my letter of advice and the news of the loss arrived in Spain by the same mail. In regard to the bill, I learn from the owners of the ship, (Messrs. Page & Allen, of Portsmouth, Va.,) have informed me that you have already corresponded with them on the subject; and,

I presume, they will attend to it; but I shall always consider
278 Mr. Murrell to blame for not having the affair properly attended to.

The cargo of the James Guthrie will be sold by an order of the admiralty court, on the 27th inst., and the ship, having been temporarily repaired, will sail for a northern port in the U. S. in a few days.

I am, respectfully, &c.,

(Signed) STEPHEN CHASE.

Messrs. PUIG, MIR & Co., *New Orleans.*

[Translated from the Spanish.]

Part of deposition of Jos. E. Murrell, under the fifteenth interrogatory, at Mobile.

(Filed 9th November, 1857.)

MOBILE, *March 22d*, 1856.

GENTLEMEN: The American ship "James Guthrie," under my command, being cleared this day, (whose cargo of one hundred and eleven masts, and other naval timber, is destined to the arsenal at the Fer-

rol.) I have to inform you that to cover the disbursements in-
279 curred by said ship during her stay in this port, I have this day drawn, under No. 292, to the order of Messrs. Puig, Mir & Co., of New Orleans, and at 60 days' sight (by 1st, 2d, and 3d of exchange) on your good selves for $4,000, four thousand dollars; which draft please protect, charging same to account of freight of my vessel, and I authorize you, by this letter, for your security, to insure full amount thereof.

Begging you will excuse the trouble, I am, &c., &c.,

(Signed) STEPHEN CHASE.

Messrs. ABARZUZA BRO'S, *Cadiz.*

P. S.—I authorize you, as above, to insure said amount of $4,000, adding the difference of exchange, charges, and commission.

(Signed) STEPHEN CHASE.

Endorsed: U. S. district court. Magin Puig *et al.* vs. The ship James Guthrie, &c. Translation from the Spanish. A part of deposition of Jos. E. Murrell, under 15th interrogatory, in first Mobile commission. J. A. Manning, proctor for libellants. Letter and postscript of 22d March, 1856.

280 [Translated from the Spanish.]

Exhibit C.—New Orleans commission.

Extract of Abarzuza Bro's letter to Puig, Mir & Co., dated in Cadiz, 28 April, 1856.

The captain of the "James Guthrie," Stephen Chase, writes from Mobile, under date of 22d March, ult'o, advising us that his vessel was cleared on that day with a cargo of one hundred and eleven masts and other timber for the Ferrol.

At the same time he also advises us that, to cover his disbursements during his sojourn in port, he has drawn against us for four thousand dollars, at sixty days' sight to your order, and requests us to insure said amount.

According to our laws, no freight is due or earned until after faithful delivery of the merchandise, therefore we cannot accept this draft for account of the captain, but we will duly protect it under protest, to honor your own signature, if it appears on said draft as first endorsers, without predjudice of taking care that you are reimbursed from the amount of said freight, payable in the Ferrol.

We have been unable to effect the insurance, as our laws do not permit such insurance on freight; to enable us to do so, it would have been necessary to draw a bottomry bond in Mobile.

281 To do all in our power towards protecting the interests of those concerned, we have transferred the order to your friend Dr. Anselmo de Arrogave, requesting him to give you immediate notice for your guidance.

(Signed) ABARZUZA BRO'S.

Endorsed: U. S. district court. Magin Puig *et al.* vs. Ship James Guthrie, &c.

Translation of Exhibit C, in New Orleans commission.

J. A. MANNING,
Proctor for Libellants.

282 [Translation.]

MOBILE, 22*d March*, 1856.

GENT'N: The Amer. ship'n ship Jas. Guthrie, under my command, cleared to day at this custom-house, laden with 111 masts, spars, and other naval timber, destined for the arsenal at Ferrol, Spain, and requiring funds here to meet the disbursements of said ship during her stay in this port, I have to advise, having this day drawn upon you $292, order Messrs. Puig, Mir & Co., of New Orleans, at 60 days' sight, ⅓ of exchange for $4,000, which please accept on presentation on account of the freight of said ship, and to cover my said valuation, you will please, and are herehy authorized, to insure my freight for an equal amount.

Yours, respectfully,

(Signed) STEPHEN CHASE.

Messrs. ABARZUZA BROTHERS, *Cadiz.*

P. S.—In effecting the above insurance for the amount of my bill, you will add thereto difference of exchange, charges, and your commission.

(Signed) STEPHEN CHASE.

283 [Translation.]

MOBILE, 23*d March*, 1856.

DEAR SIRS: * * * Capt. Chase has drawn at 60 d's sight upon Messrs. Abarzuza Brothers for $4,000, which draft I enclose to you herein, and you will please negotiate the same, advising me the rate of discount, &c.

Herewith bill laden, &c.

(Signed) JOS. E. MURRELL.

Messrs. PUIG, MIR & Co., *New Orleans.*

MOBILE, 24 *March*, 1856.

DEAR SIRS: * * * Captain Chase, of the Amer'n ship James Guthrie, as he advises you by his letter here enclosed, has drawn upon you at 60 d's sight, order Puig, Mir & Co., for $4,000, on account of the freight of said ship, as customary, with authority for you to insure to cover the same * *.

Yours, truly,

(Signed) JOS. E. MURRELL.

Messrs. ABARZUZA BROTHERS, *Cadiz.*

284 (Copy.)

KEY WEST, *April* 15, 1856.

SIR: The James Guthrie came ashore in Tortugas, on the 28th ult'o. I (with the assistance of wreckers) succeeded in getting her off, after being six days ashore, by taking out 6 of the spars and several pieces of timber, and was towed here by the U. S. steamer Corwin.

The ship is badly injured and must discharge the cargo; now, if these spars lie in the water while the ship is repairing, will they not be eat by worms?

Please write me what you think of it. You must be aware that the expense of discharging, taking out of water, and loading again, will be almost as much as they are worth.

Any suggestion you have to make, as regards the cargo, will be thankfully received.

Your ob't serv'ts,

(Signed) STEPHEN CHASE.

JOSEPH E. MURRELL, Esq., *Mobile.*

(Copy)

MOBILE, *May 2d*, 1856.

STEPHEN CHASE, Esq.,
Captain ship Jas Guthrie, Key West.

DEAR SIR: I am in receipt of yours of the 15 ult'o. You
285 informed me that your ship is badly injured and must be discharged, and that the expenses of discharging, taking the cargo out of water, and reloading, will be almost as much as it is worth, &c., and you ask me to write you what I think of it, and express the desire for me to make you suggestions. In reply I have to state, that the matter being in your hands, and beyond my control, and at a distant port, even if I could make any suggestions, I cannot interfere.

Regretting your misfortune, I remain yours, truly,

(Signed) JOS. E. MURRELL.

286 (Copy.)

NEW ORLEANS, *July*, 1856.

Messrs. PAGE & ALLEN, *Portsmouth, Va.:*

DEAR SIRS: We wrote you on the 4th inst., as p'r copy enclosed, which we beg to confirm.

We have just rec'd the protest of the bill drawn on Messrs. Abarzuza Brothers, of Cadiz, by Capt. Chase, for disbursements made for account of your ship, Jas. Guthrie, which bill we negotiated with our endorsement, and the same having returned protested, as p'r protest enclosed, for non-payment, we look to you as the owners of said ship, as well as to Capt. Chase, for payment of principal and damages, as p'r statement annexed, and amounting to $, which

please pay to the order of our friend, Mr. Joseph E. Murrell, of Mobile, who recommended Capt. Chase's said bill of exchange to us.

Yours, respectfully,

(Signed) PUIG, MIR & CO.

(Copy.)

MOBILE, *July* 25, 1856.

Messrs. PAGE & ALLEN, *Portsmouth, Va.:*

DEAR SIRS: I wrote you on the 8th inst., as per copy enclosed, and continue deprived of any reply to my letters.

287 Messrs. Puig, Mir & Co. having no correspondents in your place, have requested me, not hearing from you, to forward their letter to you, with protest of Capt. Chase's draft for disbursements of your ship, Jas. Guthrie, which protest and letter from Messrs. Puig, Mir & Co., please find enclosed herewith, preferring, as I presume you do, although you have not replied to my letters, to correspond with you direct for Messrs. Puig, Mir & Co., to writing a third party, and as Messrs. Puig, Mir & Co. request, you will make the payment to me. I am anxious to know if Capt. Chase forwarded all the documents relating to the loss of the cargo to Spain, and to whom. His bills lading were "to order;" he may have been at a loss who to transmit the papers to.

I will esteem it a favor, in the continued absence also of any letter from Capt. Chase, if you will write me by return mail, and give me such information as you may be in possession of; and also inform me if Capt. Chase has left Key West, and where he will go to. Waiting your reply.

I remain, &c.,

(Signed) JOS. E. MURRELL.

288 (Copy.)

PORTSMOUTH, VA., *July* 23, 1856.

JOSEPH E. MURRELL, Esq., *Mobile:*

D'R SIR: Your letter of the 8th inst. is at hand. The ship Jas. Guthrie is on her voyage to New York. We have not yet had an opportunity to ascertain what is customary and right, and will write as soon as the matter can be investigated.

We will have the insurance papers forwarded, as you desire, as soon as made up.

Yours, respectfully,

(Signed) PAGE & ALLEN.

(Copy.)—12.

MOBILE, *August* 15, 1856.

Messrs. PAGE & ALLEN, *Portsmouth, Va.:*

DEAR SIRS: In due course I had the pleasure to receive your valued favor of the 23d ult'o.

As you say you will forward the papers as soon as made up, I infer

that Capt. Chase did not complete them, and remitted from Key West. I exceedingly regret the delay, &c.

* * * I note your remarks respecting the disburse-
289 ment bill which I have communicated to Messrs. Puig, Mir & Co.

Y'rs, truly,

(Signed) JOS. E. MURRELL.

290 (Copy.)

MOBILE, *July 8th*, 1856.

Messrs. PAGE & ALLEN, *Portsmouth, Va.:*

DEAR SIRS: I wrote you on the 2d ult'o, and continue deprived of your favors.

I beg to enclose you copy of a letter which Capt. Chase wrote to Messrs. Puig, Mir & Co.

When Captain Chase ascertains the fact that his letter, advising his bill for your ship's disbursements, was forwarded by first mail, he will not be so ready to charge me with a dereliction of duty, as an excuse for not writing Messrs. Puig, Mir & Co. something more satisfactory in regard to their reimbursement of said bill, (although I see he tells them that you will attend to it,) and which, as you have been likewise advised for your government also, they negotiated with their endorsement, and my assurances that in case of any accident you were good for the amount.

You will perceive by the correspondence that the captain's letter, advising his bill and the news of the loss of his ship, did not reach Cadiz, as he supposes, by the same mail, but the contrary is the fact,
and it seems that the consignees left no effort untried to insure
291 the freight on the continent; and the news of the loss of the ship, which occurred soon after she left here, reached London before they could insure there, which, it seems, they tried to do. As Capt. Chase has not forwarded his papers respecting the loss of his cargo to me, I presume he will transmit them to you, unless he sends them to Spain direct to Messrs. Abarzuza Brothers, at Cadiz.

Hoping to hear from you soon, I remain yours, respectfully,

(Signed) JOS. E. MURRELL.

292 [Translated from the Spanish.]

Part of deposition of W. Sedley Johnson, under the fourteenth cross-interrogatory, at Mobile. Filed 9 November, 1857.

MOBILE, *March 24th*, 1856.

Messrs. B. MITJANS & Co., *Paris:*

GENTLEMEN: It is important that the enclosed letter for Messrs. Abarzuza Bro's, of Cadiz, should reach its destination without delay. I also enclose one for our friend, Mr. Mir, &c., &c.

(Signed) JOS. E. MURRELL.

Endorsed: U. S. district court. Magin Puig *et al. vs.* The ship James Guthrie, &c. Translation from the Spanish of part *part* of deposition of W. Sedley Johnson, under 14th cross-interrogatory, in first Mobile commission. J. A. Manning, proctor for libellants.

[Translated from the Spanish.]

Part of deposition of W. Sedley Johnson, under the eighth cross-interrogatory, at Mobile.
Filed 9 November, 1857.

Capt. Chase has drawn at 60 days' sight against Messrs. Abarzuza Brothers, a bill of exchange for four thousand dollars, which I beg to enclose to your care for negotiation, requesting you will inform me at what rate of discount such negotiation is effected.

Endorsed: U. S. district court. Magin Puig *et al. vs.* The ship James Guthrie, &c. Translation from the Spanish. Part of deposition of W. Sedley Johnson, under 8th cross-interrogatory, in 1st Mobile commission. J. A. Manning, proctor for libellants.

[Translation from the French.]

Part of deposition of W. Sedley Johnson, under the 12th cross-interrogatory, at Mobile.
Filed 9 November, 1857.

MOBILE, 27 *January*, 1855.

Mr. B. AUBON, *Toulon:*

The ship James Guthrie, under my command, chartered in New York, by Mr. C. F. Stewart, to take a cargo of masts and other naval timber, at Mobile, for Toulon, has now completed loading to your consignment, and, weather permitting, will sail the day after to-morrow. Being in want of funds for the disbursements of my said vessel in this port, I have, this day, drawn at 60 days' sight, to the order of A. P. Woodruff, for fr'cs 19,610, on your good self; which draft please protect on its presentation, on account of freight of the said ship James Guthrie, which will amount to about two thousand pounds sterling; and I beg that you will have the amount of my aforesaid draft on you secured by an insurance of f'cs 25,000, twenty-five thousand francs on said freight, for which I will arrange with you on my arrival at Toulon. The cargo is insured in London,
295 by Messrs. Stewart and Murrell, of that city.

I remain, &c., &c.,

(Signed) STEPHEN CHASE.

Endorsed: U. S. district court. Magin Puig *et al. vs.* The ship James Guthrie. Translation. Part of deposition of W. Sedley Johnson, under 12th cross-interrogatory, in first Mobile commission. J. A. Manning, proctor for libellants.

296 [Translated from the Spanish.]

Extract of a letter of Anselmo de Arrogave to Puig, Mir & Co., dated London, 9th May, 1856.

I enclose a letter from Messrs. Abarzuza Bro.'s, of Cadiz, for you. Said gentlemen ordered me to insure four thousand dollars for part of freight of ship James Guthrie, bound from Mobile to the Ferrol, but the misfortunes of that vessel on that coast being known here, I have not been able to effect the insurance of said risk, of which I advise you for your guidance.

(Signed) ANSELMO DE ARROGAVE.

Endorsed: U. S. district court. Magin Puig *et al. vs.* The ship James Guthrie. Translation of a part of Exhibit C, in New Orleans commission. J. A. Manning, proctor for libellants.

297 At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the eighth day of May, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et als.*
vs.
THE SHIP JAMES GUTHRIE, &c. } 14, 62.

This case having been heard on the pleading and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises: It is now ordered, adjudged, and decreed by the court, that the libel filed herein be dismissed with costs to the claimant, to be taxed.

And it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the stipulators for libellants' costs pay into the registry of the court the amount of their stipulation, and that the clerk distribute the proceeds in satisfaction of the costs of this suit.

(Signed) SAM'L R. BETTS.

298 Filed the eighth day of May, 1860.

299 U. S. district court, S. D., N. Y.

MAGIN PUIG and others
vs.
THE SHIP JAMES GUTHRIE, &c. }

To the clerk of the U. S. district court:

Please take notice that the libellants appeal from the final decree of the court in this cause.

Yours, &c.,

J. A. MANNING.

New York, May 8, 1860.

Endorsed: 14, 62. U. S. district court, S. D., N. Y. Magin Puig and o'rs *vs.* The ship James Guthrie, &c. Notice of appeal to circuit ct. from final decree. J. A. Manning, proctor for libellants.

Filed 8th May, 1860.

300 District court of the United States of America for the southern district of New York, in the second circuit.

MAGIN PUIG *et als.*, libellants and appellants,
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c.,
JAMES W. PHILLIPS, cl'm't and appellee.
} Bond for costs.

Know all men by these presents that we, Calvin Durand and Henry O. Brewer, are held and firmly bound unto the above-named claimant and appellee, in the sum of two hundred and fifty dollars, to be paid to the said claimant, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-seventh day of June, and 9th day of July, in the year of our Lord one thousand eight hundred and sixty.

Whereas the above-named libellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the 2d circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the southern district of New York: Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

C. DURAND. [L. S.]
H. O. BREWER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 27th day of June, 1860, before me, as to C. Durand, and on 9th July, 1860, as to H. O. Brewer.

JOSEPH BRIDGHAM,
U. S. Com'r.

301 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Calvin Durand and Henry O. Brewer being duly sworn, each depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

C. DURAND.
H. O. BREWER.

Sworn to this 27th day of June, A. D. 1860, before me, by C. Durand, and on the 9th day of July, 1860, by H. O. Brewer.

JOSEPH BRIDGHAM,
U. S. Com'r.

The sufficiency of the sureties to the within bond approved.

SAM'L R. BETTS,
District Judge.

Filed this 9th day of July, 1860.

302 U. S. district court, S. D. N. Y.

MAGIN PUIG *et al.*
vs.
THE SHIP JAMES GUTHRIE, &c.

We consent that the enrolling of the apostles, under the appeal, be extended over the approaching September term of the United States circuit court for this district.

New York, August 20, 1860.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Claimant.

Endorsed: 14, 62. U. S. district court. Puig *et al. vs.* The ship James Guthrie, &c. Consent extending time to enrol apostles over Sept. term, 1860.

Filed 21 Aug't, 1860.

303 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 21st day of August, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Samuel R. Betts, district judge.

MAGIN PUIG *et al.*
vs.
THE SHIP JAMES GUTHRIE, &c. } Vol. 14, page 62.

On filing a consent, signed by the proctors for the claimants, and on motion of the proctor for the libellants, it is ordered that the enrolling of the apostles, under the appeal in the above-entitled cause, be, and the same is hereby, extended over the approaching September term of the United States circuit court for this district.

304 Filed the twenty-first day of August, 1860.

305 Circuit court of the United States, southern district of New York.

MAGIN PUIG and others, libellants and appellants,
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c., JAMES W. PHILLIPS, claimant and respondent.

To the honorable the circuit court of the United States for the southern district of New York:

The appeal of the above-named appellants respectfully showeth: That on or about the 27th day of January, 1857, the above-mentioned

libellants and appellants, Magin Puig, Ramon Mir, and Juan Baptista Soulere, exhibited their libel in the district court of the United States for the southern district of New York, against the said ship James Guthrie, her tackle, &c., claiming thereon over fifty dollars.

That process issued out of said court having been served, and said vessel therein having been arrested and taken into custody by the marshal of the southern district of New York, the above-named James W. Phillips did cause said ship to be released, by giving the
306 usual stipulations; and that the said Phillips, on or about the eleventh of April, 1857, did file his separate claim and answer to the said libel in the said district court, as by reference to said libel and the said answer may more fully appear.

That the said cause came on to be heard before the honorable Samuel R. Betts, judge of the said district court, on or about the 19th and 20th days of December, 1859, and the 10th of March, 1860, upon the depositions and proofs taken in said case, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon on the 8th day of May, 1860, made a decree or sentence in said cause, whereby it was ordered, adjudged, and decreed, that the said libel be dismissed with costs by the claimant to be taxed.

And these appellants are advised and insist that the said decree is erroneous, and these appellants appeal from the whole of the said decree in favor of the said James W. Phillips to the next circuit court, to be held in the said district; and on the said appeal they intend to have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proofs to be
307 introduced in the said circuit court.

And he prays that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed, or such other decree therein be made as to the said circuit court shall seem just; and that the respondent may be condemned to pay to the appellants their costs and damages in the premises.

J. A. MANNING,
Proctor for Libellants and Appellants.

Endorsed: 14, 62, 63. Circuit court of the United States, southern district of New York. Magin Puig *et al. vs.* The ship James Guthrie, her tackle, &c., James W. Phillips, claimant and respondent. Appeal. J. A. Manning, proctor for libellants and appellant.

Filed 5 Feb'y, 1861.

308 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the 13th day of May, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

MARTIN PUIG *et al.*
vs.
THE SHIP JAMES GUTHRIE, her tackle, apparel, &c.

The appeal from the decree of the district court in this case coming on to be heard—

Mr. Tracy reads testimony from the apostles, on part of the libellants.

Mr. Evarts reads testimony from the apostles, on the part of the respondents.

Mr. Tracy argues on part of lib'l'nts.

Mr. Evarts " " " resp'd'ts.

Mr. Tracy is heard in reply.

Cur adv vult.

309 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday, the 2d day of Jan'y, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

MAGIN PUIG, REMON WIER, *et al.*, lib'l'nts and app'l'nts,
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c., JAMES W. PHILLIPS, cl'm'ts and resp'd'ts.

The appeal in this case, taken by the libellants from the final decree of the district court therein, having been brought on to argument on the 13 day of May, 1862, and Mr. Tracy and Mr. Manning having been heard on the part of the appellants, and Mr. Evarts and Mr. Choate, on the part of the respondent, and due deliberation having been had, it is ordered, adjudged, and decreed, that the said decree of the district court be, and the same is hereby, in all
310 things affirmed with costs.

(Copy.)

To the honorable the Supreme Court of the United States:

The petition of appeal of Magin Puig, Ramon Mir, and Juan Batisto Soulere are libellants and appellants, against the ship James Guthrie, her tackle, &c., James W. Phillips, claimant and respondent, respectfully showeth:

That on or about the 27th day of January, 1857, the above-mentioned libellants and appellants exhibited their libel in the district court of the United States for the southern district of New York, claiming therein four thousand dollars and upwards against the said ship James Guthrie, her tackle, &c., for the reasons and causes in said libel stated, to wit, that said libellants, theretofore, to wit, on the 22d day

of March, 1856, had acquired a maritime lien on said ship by virtue of advances of money by them to her master, and of his agreements in the premises, and for said reasons and causes therein stated, praying that the said vessel, her tackle, &c., might be condemned to pay the demands of said libellants, and costs in said libel mentioned; and that the said vessel, James Guthrie, was arrested upon process issued upon said libel, and was discharged on the respondent
311 filing his claim as part owner and entering into stipulations. And the respondent James W. Phillips thereupon filed his answer to said libel, and the said libellants replied thereto, and such proceedings were had in the said cause, that on the 8th day of May, 1860, a final decree was made and pronounced therein by the said district court, whereby it was ordered, adjudged, and decreed, that the said libel be dismissed with costs; and that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, in the second circuit, and that the said cause was duly tried and heard by the said circuit court; and that afterwards, on the day of , the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, which said decree of the said circuit court is, as these appellants are advised, erroneous and ought to be reversed. Wherefore the appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and pray that the said Supreme Court will proceed to hear the said cause anew on the pleadings and proofs already taken, and such other proofs as may be hereafter taken; and that the
312 said decree of the circuit court, and every part thereof may be reversed, and a decree made in conformity with the prayer of said libel, or such other decree as to the said Supreme Court shall seem just.

(S'd) J. A. MANNING,
Proctor for Libellants and Appellants,
No. 63 William st., New York.

(S'd) CHA'S TRACY,
Advocate, Proctor, &c., 18 Wm. st., New York.

313 Lodged in clerk's office Jan'y 10, 1863.

314 Circuit court of the United States of America for the southern district of New York, in the second circuit.

MAGIN PUIG and others, lib'l'nts and app'l'nts,
vs.
THE SHIP JAMES GUTHRIE, her tackle, &c., JAMES W. PHILLIPS, claimant and appellee.
} Bond for costs.

Know all men by these presents, that we, Thomas Galway and Daniel M. Teller, are held and firmly bound unto the above-named claimant and appellees, in the sum of two hundred and fifty dollars,

to be paid to the said cl'm't and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the seventh day of Jan'y, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas the above-named libellant and appellant has prosecuted an appeal to the Supreme Court of the United States to be held at Washington, in the district of Columbia, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

THO'S GALWAY. [L. S.]
DAN'L M. TELLER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 7 day of Jan'y, 1863.

R. E. STILWELL,
U. S. Com'r.

315 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Tho's Galway, No. 48 west 20, and Daniel M. Teller, No. 16 west 23d st., being duly sworn, each depose and say, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

THO'S GALWAY.
DAN'L M. TELLER.

Sworn to this 7 day of Jan'y, A. D. 1863, before me.
R. E. STILWELL,
U. S. Com'r.

I approve the sureties to the above bond as sufficient for the payment thereof.

N. Y., Jan'y 8, 1863.

SAM. R. BETTS.

Filed this 10th day of Jan'y, 1863.

316 *Citation.*

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit—

To the ship James Guthrie, her tackle, &c., James W. Phillips, claimant and respondent:

Whereas Magin Puig, Ramon Mir, and Juan Batiste Soulere, libellants of the ship James Guthrie, her tackle, &c., has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, dismissing the libel upon said ship, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December, 1863, to do and receive what may appertain to justice to be done in the premises.

317 Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 8 day of January, in the year of our Lord 1863, and of the independence of the United States the eighty-seventh.

SAM'L R. BETTS.

Endorsed: U. S. circuit court, Magin Puig *et al. vs.* The ship James Guthrie, &c. Citation on appeal to U. S. Supreme C't. J. A. Manning, proctor for libellants and appellants.

We admit service of a copy of the within citation, dated New York, Jan'y 10, 1862.

EVARTS, SOUTHMAYED & CHOATE,
Resp'd's Att'ys.

Filed Jan'y 13, 1863.

Supreme Court of the United States,

No. 148.

MAGIN PUIG, RAMON MIR AND JUAN BATISTA SOULERE,

Appellants,

vs.

THE SHIP JAMES GUTHRIE, HER TACKLE, &C., AND JAMES W. PHILLIPS,

Claimant and Respondent,

ARGUMENT

On the part of the Appellants.

J. ANGUS MANNING,
CHARLES TRACY,
Of Counsel for Appellants.

NEW YORK:
WM. C. BRYANT & CO., PRINTERS, 41 NASSAU STREET, CORNER OF LIBERTY.

1865.

2239

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N Y

U. S. Supreme Court.

PUIG, MIR, AND SOULERE,
Appellants,

vs.

THE SHIP JAMES GUTHRIE, AND PHILLIPS,
Claimant and Respondent.

APPELLANTS' ARGUMENT.

ABSTRACT.

The libel was filed in the District Court for the Southern District of New York, in Admiralty. It was filed against the ship, to recover for moneys advanced to the master, at Mobile, to provide for the disbursements which were necessary to get the vessel to sea (p. 1–3.)

The vessel being arrested at New York on process in this suit, Phillips intervened as owner of the vessel, and on stipulation obtained a discharge of the entire vessel (p. 5–9.) Afterwards he filed an answer to the libel, by which he claimed to be owner of $\frac{31}{32}$ of the vessel (p. 10–13).

No party appeared to contest the suit for the remaining $\frac{1}{32}$ of the ship.

Proofs were taken and a trial was had. The District Judge decreed against the libellants (p. 115). The case was appealed to the Circuit for the Southern District of New York, where the decree was affirmed (p. 119.)

The libellants appeal to this Court (p. 119–122).

THE FOLLOWING FACTS APPEARED ON THE TRIAL.

1. The ship was chartered in October, 1854, at New York, for two voyages from Mobile to ports of France and Spain (p. 25–27, p. 28, fol. 73; p. 29, fol. 74). The charter provided expressly that the owners should keep the vessel "provided with every requisite, and with men and provisions necessary for such a vessel" (p. 26, fol. 68.)

2. Pending this charter, in March, 1856, before the commencement of the second voyage, the vessel lay at Mobile, laden with a cargo destined for Ferrol, in Spain; and she required disbursements to the amount of $4,000 to enable her to go to sea—the same consisting of pilotage charges, bay steamer charges, stevedore's bills, ship chandler's bills, water, and other supplies necessary for the voyage (p. 37, 40, 61, 73, fols. 101, 178, 185, 124, 154, 160, 161.)

3. The owners resided in New York and in Virginia, and were without means or personal credit at Mobile. The master, Capt. Chase, himself owner of $\frac{1}{32}$ of the ship, and being without pecuniary responsibility, applied to Joseph E. Murrell, of Mobile, the consignee of the vessel, and one of the charterers thereof, stated the necessity of the case, and requested assistance (p. 37, 40, 44, 73, fol. 96, 170, 107, 111, 193, 195.)

111. 186

4. Murrell thereupon undertook to assist in procuring the requisite money from the libellants, Puig, Mir & Co., of New Orleans. The method adopted was, that a bill of exchange should be drawn by Chase, the master, on Abarzuza Brothers, consignees of the vessel at Cadiz, against the freight, payable at 60 days sight to the order of the libellants; the ship and owners to be liable for the money, and the consignees at Cadiz to be requested to insure on the freight. Murrell, the consignee of the vessel at Mobile, who made this arrangement, at the same time was the acting general agent and commercial correspondent of the libellants, and by his procurement they agreed to furnish the money, upon receiving the proposed bill of exchange, commonly called a disbursement bill (p. 37, 38, 43; fol.

180, 96, 186, 188, 98, 104, 187, 129, 130, 134, 132, 194, 224, 227, 228, 232, 235)

5. The disbursement bill was thereupon drawn by Chase, the master, at Mobile, March 22, 1856, addressed to Abarzuza Brothers, Cadiz, for $4,000, at 60 days sight, payable to the order of Puig, Mir & Co., the libellants (p. 35). The bill was delivered to Murrell for the libellants; and he immediately, on their behalf, advanced the money to the master, who used it to disburse the vessel (p. 38, 40, 73, 74). This advance of the libellants was made immediately through Murrell, from whom they obtained it temporarily on their own credit, at 30 days, and to whom they refunded such temporary loan by paying his draft on them (p. 40, 41, 45, 74.)

The transaction between the libellants and the master—the drawing and delivery of the disbursement bill, and the furnishing of the money through Murrell—was completed by contemporaneous acts, all performed March 22, 1856.

The bill was expressly agreed and declared by the master, at the time, to carry a lien on the ship (p. 71), and such was the understanding of the parties (p. 52, 68, 71, 91, 89) and the money was actually used for the necessary disbursements of the vessel (p. 48, 49, 53, 61, 76, 77.)

6. The master, by letter, advised Abarzuza Brothers, the drawees, that such bill had been drawn, and informed them of the reason for drawing it, and requested them to pay it from the freight, and to take insurance on the freight. The master's letter was sent forward, and arrived in due course; but no insurance was effected, freight not being insurable in Spain, and an order for insurance sent to London not having arrived until after news of the disaster of the vessel, which defeated her voyage (p. 42, 43, 44, 98, 108, 114) 109. 110. 113

7. The libellants endorsed and negotiated the bill of exchange. It was dishonored by the drawees when presented for acceptance, and was accepted, *supra protest*, for the honor of the endorsers, the libellants (p. 72–109). At maturity it was presented to the drawees for payment, and was protested for non-payment (p. 22–23.) It came back,

with the protest, in September, 1856, to the libellants at New Orleans (pp. 21–22), and they sent it to their correspondents at New York for collection in the same month, and while the ship was still at sea.

8. The progress of the ship was as follows: (A. 103-108)

March 26, 1856, sailed from Mobile.
" 30, " went ashore on Tortugas shoal.
April 5, " got off and entered Tortugas harbor.
" 10, " was towed to Key West.
July " sailed from Key West for New York.
" 27, " reached New York.
Augt. 26, " sailed from New York for England.
(P. 98, 103–106.)
Jan'y 26, 1857, reached New York on her return from England.
" 27, the libel in this suit was filed.

It thus appears, that before the disbursement bill and protest reached the libellants at New Orleans, (September, 1856,) the ship had sailed for England, and the libellants proceeded against her at the first opportunity, when she returned from England.

9. There prevails at Mobile and New Orleans a general and uniform custom among merchants and shipowners, that a bill of exchange drawn by the master of a vessel, on the owners of the vessel or against the freight, to raise money for necessary disbursements of his ship, carries with it a lien on the vessel, and such lien accompanies the bill through all the hands to which it passes, without any express agreement for the creation of such lien. (Pp. 62–3, 63, 64, 67, 68, 70, 72, 78, 79; ~~166, 168, 170, 171, 178.~~) 66)

10. This ship was worth between $35,000 and $40,000, (p. 21).

At the time of her registry, Nov. 1, 1854, the title stood thus, (p. 99):

In Page and Allen, of Portsmouth, Va., $\frac{3}{32}$.
" Jno. E. Doyle, of Norfolk, Va., $\frac{1}{32}$.
" Stephen Chase, of New York $\frac{1}{32}$.

The transfers in evidence are as follows:

Page and Allen to Phillips, dated August 7, 1856, acknowledged Aug. 11 and 13, and recorded Aug. 16, 1856, conveying $\frac{2}{3}\frac{0}{4}$, (pp. 98–99).

Page and Allen to Phillips, dated Septemher 20, 1856, acknowledged September 26, and recorded September 26, 1856, conveying $\frac{1}{3}\frac{1}{2}$, (pp. 100, 101).

No other transfer was shown.

Phillips therefore never acquired the title of Doyle to $\frac{1}{3}\frac{1}{2}$, nor the title of Chase to another $\frac{1}{3}\frac{1}{2}$.

The second bill of sale from Page and Allen covered $\frac{1}{3}\frac{1}{2}$ more than they owned, and was made for a nominal consideration; and it was acknowledged, and, of course, delivered, after Phillips had notice of the libellant's claim; such notice having been given to him by Mr. Durand, September 24 or 25, 1856, (p. 21).

The claimant Phillips, therefore, failed to sustain his claim of being the entire owner of the vessel; and as to $\frac{3}{3}\frac{2}{2}$ parts of her, the libel was not defended, and should have been sustained without reference to the other facts in the case.

Points and Argument.

This action depends on certain well settled rules of law, the principal of which are the following:

A ship being in a foreign port, and needing supplies or repairs, in order to enable her to proceed on her voyage, the master being without means or credit of the owners, has authority to procure the supplies or repairs, and the debt thus incurred is a lien on the vessel; and the port of another State of the Union is a foreign port within this rule.

If the supplies or repairs have been procured, and the vessel is under a lien for the payment, which may cause her to be arrested before sailing, the master has authority to borrow money to discharge the debt, and the person who advances the money has a lien on the vessel for his loan.

The lien in such cases arises from the nature of the trans-

action, and is good with or without a writing or a parol agreement to confer it.

The giving by the master of a promissory note or bill of exchange, or any other security for the payment of the money, does not hinder, defeat, or impair such lien, but merely suspends the power of enforcing it during the term of credit thus given.

I.

A ship being in a foreign port, and money being required for the necessary disbursements to get her to sea, any party making the advances for that purpose acquires a lien on the vessel, by the general maritime law and by the civil law, without any instrument of hypothecation, or any express contract for such lien.

3 *Kent's Com.*, 170. The general maritime law, following the civil law, gives a lien on the ship as security to a party who furnishes necessaries to a foreign ship, or to a ship in the port of a State to which she does not belong, and he may maintain a suit *in rem.* in the Admiralty to enforce his right.

Id., 171. The power of the master to obtain necessaries for the voyage, and subject the ship to liability therefor, includes authority in him to raise money; the advances being made for repairs or supplies for the voyage, or for the safety of the ship. The master is to act with reasonable discretion in such cases, on it appearing that the necessaries could not be had with funds or personal credit at his control.

1 *Parsons on Maritime Law*, 385. S. P.

Id., 408. The master may borrow the money without giving a bottomry bond, and yet the ship is liable.

"It must be remembered that the law, merchant, not only permits such a bargain, but, of itself, and by its own proper

force, has this effect. For if a master borrow money abroad for the necessities of the ship, and to apply the same, and no instrument of bottomry or respondentia is given, the law, merchant, gives to the lender a lien on the ship for the amount, in addition to any remedy he may have at common law against the owner as the debtor for money borrowed."

Id., 489. One who lends money for the use of a ship has the same privilege as a material man.

Abbot on Shipping, 156, *nt.* 1. The master has power abroad to borrow money for the ship, without bottomry or respondentia bond, pledging both the ship and the owners' credit.

Flander's Maritime Law, 174. The general right of a master abroad to borrow money for the necessary use of the vessel and bind the ship for payment, is well established.

19 *Howard*, 22, 28, 29; *Thomas* v. *Osborn*. The master in a foreign port, in cases of necessity, can bind the vessel, owners, and himself for repairs or supplies: "and he does so without any express hypothecation, when, in case of necessity, he obtains them on the credit of the vessel without a bottomry bond."

"It is not material whether the hypothecation is made directly to the furnishers of repairs and supplies, or to one who lends money on the credit of the vessel, in case of necessity, to pay such furnishers."

19 *Howard*, 359, 361; *Pratt* v. *Reed*. The implied maritime hypothecation is here recognized, as arising wherever there is a necessity for it. The necessity in such case need not be so great as to authorize a bottomry bond, with the extraordinary interest incident to that species of security; and such a bond should not be given unless the master is unable to procure the money without such maritime interest.

Sprague's Admiralty Decisions, 571: *The Sea Lark*. In this case an implied lien on the vessel was sustained, there

being no express agreement for it: the vessel being abroad wanting an anchor and chain, the master having no credit, and there being no money lenders at the place.

Id., 152: *The Eliza Jane.* Such a lien arises even in favor of the consignee of the vessel, who furnishes supplies on credit and has no funds of the owner.

Pandects Lib., 14, *T.* 1; *De actione exercitoria, pl.* 11; (1 *Corp. Jur. Cio.*, 418, *Ed. Paris*, 1627.) "Si ab alio mutuatus, liberavit eum, qui in navis refectionem crediderit, puto etiam huic dandam actionem, quasi in navem crediderit." [But if the master borrowing from another party pays the person who gave credit on repairs of the vessel, I think the action must be given to him, the same as if he had given credit to the vessel.]

Sprague's Ad. Dec., 39: *The Barque Chusan.* A sister State port is a foreign port for the purposes of a lien.

1 *Blatchford & Howland*, 66—*The William & Emiline*, S. P.

(1.) The rule of implied marine hypothecation is liberally construed by Courts of Admiralty; as it favors commerce, by giving facilities for commercial voyages, and often saves the onerous burden of a bottomry bond, which requires strict proof to sustain it.

1 *Wheaton*, 96, 102: *The Aurora.* Per Story, J.: "The master may contract for repairs and supplies, and thereby indirectly bind the owners to the value of the ship and freight." * * "He may for like purposes expressly pledge and hypothecate the ship and freight, and thereby create a direct lien on the same for the security of the creditor."

3 *Sumner*, 228: *The Fortitude.* S. P. The lender, even on a bottomry bond, is not bound to show positive necessity: an apparent necessity suffices.

(2.) Hence certain presumptions of fact are allowed in favor of an implied hypothecation. The *onus* is on the party denying the lien, to show that the master had adequate funds, or that the money was borrowed on his personal credit. In the absence of proof to the contrary, the credit is presumed to have been given to the ship, and the lender is presumed to have inquired into the necessity for the advance, and to have acted properly upon the facts as made known by the master's statements; and the loan being made, the lender is not affected by the subsequent act of the master, even if he misapplies the money.

Cross on Lien, 293–297. (34 *Law Lib., Old Series.*) Id., p. 295, quoting Lord Stowell: "These liens are given as a security for money advanced for the necessary use of the ship in a foreign port where the owners and masters have no personal credit, and where, without such assistance the ship must continue to lie until it becomes rotten and useless. It is highly expedient that they should be *upheld with a vigorous hand.* The principle on which they are supported is of great antiquity, and deeply radicated in the general maritime law."

2 *Dodson*, 130, *The Hero, S. C.*

The American cases are to the same effect:

8 *Peters*, 538, 550, *The Ship Virgin.*
3 *Sumner*, 228, *The Fortitude.*
Sprague's Ad. Dec., 571, *The Sea Lark.*
Abbot on Shipping, 157, *nt.* 1.
Parsons Mar. Law, 502.

(3.) In the case at bar, it affirmatively appears that there was an actual necessity for the loan. The master and owners had neither money nor credit at Mobile. The vessel absolutely required the money for necessary disbursements, in order to going to sea, and could not move without liability to be arrested for such supplies. The funds were actually used to disburse her, and by means thereof she sailed upon her voyage.

Blatchford & Howland, 189, 192, *Gustavia.* The

necessity of the supplies is sufficiently shown, when it appears that they were furnished on the master's request. In such a case the lien arises, although it is not stipulated for.

12 *Wheaton*, 460, 470, *United States* v. *Gooding*. Declarations of the master, in an analogous case, were held to bind the owners.

(4.) The proposition, contained in the opinion of the District Judge, that no lien arises in favor of the lender where the supplies were procured before the loan was made, proceeds upon a mere distinction, and is unsustained by principle or authority.

The necessity for the money is the same, whether the supplies are yet wanting and the money is needed to buy them, or the supplies have been purchased, and the vendors have a lien on the vessel for the price. In either case, the object in getting the money is to enable the ship to go forth on her voyage; and she might as well lie by for the want of supplies as be seized and detained, on the liens of the material men and laborers for want of money to pay them off.

In the nature of the business the procuring of these necessaries occupies some period of time; and the obtaining of the money, upon a reasonable length of credit, to provide for their cost may be effected as is found practicable, either before, or after, or during such period.

4 *Dallas*, 226, *Wainwright* v. *Crawford*.
Abbot on Shipping, 156, *nt.* 1.
Flanders Mar. Law, 174.
19 *Howard*, 22, 28, 29, *Thomas* v. *Osborne*.
3 *Kent's Com.*, 171.

The view of the District Judge was not adopted by the Circuit Judge on the appeal.

(5.) The circumstance that Joseph E. Murrell, one of the joint charterers of the vessel, was the agent or broker through and by whom the loan was negotiated and made, does not affect the transaction in any degree. The duty of

having the ship proceed on her voyage was the duty of the owners, and not of the charterers. The vessel might well be consigned to Murrell, at Mobile; but the supplying of her necessities was the owner's business. Nor is the lien hindered by the presence of Chase, a part owner, as it is alleged, nor by the presence of the charterer or consignee. Nor is it material who owned the cargo. The owners of the vessel itself who send her forth into foreign ports under charter to make a voyage, thereby advertise the world that the ship may be trusted for necessaries, and will stand liable by lien for their amount.

Sprague's Adm. Dec., The Eliza Jane,
19 *Howard*, 22, 29, *Thomas* v. *Osborn,*
Id., 391, *in Pratt* v. *Reed,*

II.

The libellant's lien for the advance was not waived nor impaired by taking the master's bill of exchange.

1 *Parsons' Mar. Law*, 502, *nt.* 3. The giving of a promissory note does not amount to a waiver of the lien.

Flanders Mar. Law, 245-247, *pp.* 190, 191. The giving of time for payment is not a waiver of the lien, for the maritime lien does not require possession in the creditor. The giving of a note does not remove the lien, although it suspends the right to enforce it, until the note is dishonored.

2 *Wallace*, 230, *The Albatross.*

1 *Mason*, 192, *Gilman* v. *Brown.* The taking of the debtor's bond does not impair a lien.

1 *Blatchford & Howland*, 90, *The Hilarity.* The lien is not lost by taking security for the debt.

Olcott, 286, *The Active.* Nor by taking a note, whether the debtor's note or his agents; nor although credit is given to the agent.

(1.) The taking of the bill of exchange simply gave credit for a limited time, with no agreement, purpose, or design, to waive the lien. The master ought to gain a credit for some time on the loan. Such was the necessity of his case. The ship was liable to arrest on libel for the supplies, if she attempted to leave port without payment. He needed the money to clear her. But if he borrowed the money without any period of credit, the lender could instantly arrest the vessel, as well as could the material men. The master, therefore, raised the money on time, giving a bill of exchange, secured by the maritime lien of the lender upon the body of the vessel, which lien could not be enforced by arrest until the bill should be dishonored.

Sprague's Ad. Dec., 571. *The Sea Lark.* The lien not only arises without express agreement for it, but it remains good, and can be enforced on the return of the ship after a long absence abroad.

1 *Parson's Mar. Law*, 502. "The lien is not waived unless the contract contains stipulations inconsistent with it."

(2.) The bill of exchange had no appreciable value but for the lien, which it carried as a disbursement bill.

The master, Capt. Chase, was unknown and without credit at Mobile and New Orleans, and without pecuniary responsibility. The bill of exchange was not an obligation of the drawee unless they should accept it, and they had not agreed to accept it. Although it directed the money to be carried to the debit of the freight (fol. 60,) it was not a pledge or assignment of the freight, and gave the holder no right to hold the freight for payment. (6 *New York*, 412; 5 *Bosworth*, 341; 11 *Paige*, 517; 3 *Sandford*, 257; *Id.*, 263.)

It was not supported by any insurance of the freight; there was a bare request to the drawees to insure the freight for its protection, but no obligation on them to do so. The result which happened,—namely, that there was no freight, and no insurance, and no acceptance—was not guarded against, although the chance of its occurrence was immin-

ent. The bill, in fact, was worthless as commercial paper; and it derived its credit, currency, and value, wholly from the maritime lien of the lenders for their advance. That lien, by the settled law, attaches to the advance, in the absence of any stipulation to the contrary. (1 *Pars. Mar. Law*, 502.)

(3.) But it is shown by the proofs, that at the time of the agreement for the loan it was expressly agreed and declared that the bill of exchange should carry a lien on the vessel, and the entire transaction rested on the understanding that such a lien should attend the loan and the bill.

(*Vide ante*, *Facts*, 4, 5, 9.)

III.

The libellant's lien is further sustained by the custom at Mobile and New Orleans, which custom gives to such disbursement bill a lien on the vessel.

(1.) The custom is well proven and reasonable. It is favorable to commerce, as it facilitates the procuring of necessary advances to vessels.

(Fols. 157, 159, 161, 162, 166, 179, 172, 173, 174.)

(2.) Like other customs sustained by the Courts, it gives, confirms, or fixes a right in a party, in addition or in opposition to the general law. Customs may be local, and there are local laws, and have full force; and if a local custom confers a lien on a sea going vessel, the lien follows the vessel over all the seas as truly as a bottomry bond, or a lien for salvage would follow her. ※

(2.) The existence and validity of this custom is shown to have the sanction of a Judge of this Court, the Hon. JOHN A. CAMPBELL, a most respectable authority in the law of shipping—and not only decisive among merchants, to whom

※ 1. Smith, Leading Cases 5'88
Smiths Law of Contracts 34
Pandects Lib 1. Tit 3 § 32-35.

his opinion was known, but entitled to great weight in the decision of this cause.

See page 66, fol. 166–167.

(4.) This custom was well known to Murrell, who acted as broker and agent for both borrower and lender; and it was contemplated by him in reference to both parties, and entered into the contract, and became a vital part of it.

IV.

The lien was prosecuted diligently.

The bill of exchange, necessarily, remained abroad until the sixty days after sight, and the days of grace had elapsed, in order to be presented for payment and protested for non payment. As soon as it could be transmitted it came forward, and it arrived in this country when the ship was at sea. On her coming into port, the suit was promptly brought.

Sprague's Ad. Dec., 571. *The Sea Lark.*

V.

The libellant's demand against the vessel is in all respects meritorious.

The shipowners, who had chartered the vessel, and were bound by the charter to make the voyage, had the benefit of the advance. The money was used for them, and in their business, and to expedite the vessel and perform their duties under their charter; and by natural justice, *ex acquo et bono*, they should be held liable in their property, the ship, for payment.

Nothing in the mere forms and machinery of doing the business, used for convenience, and to expedite the ship's sailing:—for example, a check of Murrell, given as an ad-

vance of the libellants, the draft of Murrell on the libellants to reimburse himself, the disbursement bill of exchange, the letter to the consignees in Spain:—should be construed to deprive the lenders of their lien on the vessel, which was their natural, customary, legal, reasonable, and actual reliance for the return of their money.

The whole system of maritime liens rests upon the advantages to commerce and navigation from prompt means of relief to vessels; and a rule which would defeat the action of these libellants, would be an obstruction to the course of maritime business as well as a denial of manifest equity.

VI.

The claimant's allegation of a *bona fide* purchase of $\frac{1}{32}$ of the ship, without notice of the libellants' lien, is not sustained; and consequently his purchase is subject to the lien, and he cannot object to delay in enforcing the lien, if any delay should occur.

(1.) The claimant had notice of the libellant's demand on the vessel, September 24 or 25, 1856, (p. 21). The conveyance to him of the $\frac{1}{32}$ was not acknowledged, and, of course, was not delivered or received, until September 26, being subsequently to such notice, (fol. 260).

(2.) The conveyance was not taken in good faith, and for value.

It was for $\frac{1}{32}$, when Page and Allen, the vendors, held only $\frac{1}{32}$, (p. 100, fols. 257, 228).

It was given for a nominal consideration, (fol. 257).

Immediately before receiving the conveyance, Phillips, the claimant, described his interest in the ship at about $10,000, which money he had expended on her at Key West (p. 21). She left Key West in July, and the bill of sale for the $\frac{2}{32}$ was dated in August, (p. 101, fol. 269). This, therefore, was a collateral security or mortgage for such $10,000, and not an absolute transfer; for $\frac{2}{32}$ of a ship, worth $35,000 to $40,000, would amount to between $21,800 and $25,000.

If the claimant, at the time of his conversation with Durand, (p. 21,) already held both bills of sale, then it would be a still stronger case for treating him as a mere mortgagee; his investment of $10,000, bearing no such proportion to the value of the ship, as to stand for the purchase of $\frac{1}{32}$.

With these things against his pretensions to be a *bona fide* purchaser, the claimant gave no proof to sustain such pretensions; although the proof of payment of full consideration and good faith, if they existed, must be in his possession.

From Phillips' position, as part-owner from August 7th, and from his relations to Page and Allen, in connection with the ship, while she was at Key West, in months previous, it is clear that he knew of the libellants' demand long before Durand gave the direct notice in September, and that he resorted to the contrivance of a further bill of sale of $\frac{1}{32}$, in order to cover the ship before the protested bill come could home, or the vessel could be libelled.

VII.

In the absence of proof of an actual consideration for the first transfer $\frac{2}{32}$, which the claimant could give if it existed, and in view of what he said about his interest in the vessel, his first transfer presumptively was taken by way of mortgage for about $10,000, although absolute in form; and his debt thus secured, must have been wholly or partly reimbursed out of the insurance on the vessel, which would go first to defray his advance of such $10,000 for the repairs at Key West.

VIII.

The libellants were entitled to a decree for the whole amount of their advance, with interest.

(1.) The entire vessel is liable for this debt.

(2.) One thirty-second part of the ship, to which Phillips, the only contestant, makes no title, is clearly liable. He having bonded the vessel and taken her out of the Marshal's hands, upon claim that he was sole owner, (*p.* 9, *f.* 14,) his bond and stipulation stand in lieu of the $\frac{1}{32}$ to which he made no claim when he put in his answer, (*p.* 10, *f.* 22, *article first*). One thirty-second part of the ship should have been paid on the libellants' claim, without reference to the other matters involved in the cause.

(3.) Another $\frac{1}{32}$, which Phillips claims by his answer, does not belong to him—namely, the $\frac{1}{32}$ which was included in Page and Allen's bill of sale of September, which bill is for $\frac{11}{32}$, when they had only $\frac{10}{32}$, (p. 100, 101). Phillips shows no right to this $\frac{1}{32}$. The only evidence are the bills of sale, and these show that Page and Allen assumed to convey $\frac{11}{32}$, when they held only $\frac{10}{32}$. That $\frac{1}{32}$ belonged to Doyle when the vessel was registered, and is presumed to remain his until he shall be shown to have sold it.

(4.) The libel and the arrest of the vessel are notice to all the world, and affect the owners, whoever and wherever they may be. The owner of a fractional interest, who does not come into Court and assert and maintain his claim, leaves the libellant to enforce his demand against such interest. Thus the libellants in this case are indisputably entitled to hold these two shares of $\frac{1}{32}$ each; and Phillips, having liberated the vessel by substituting his bond in her place, must be decreed to pay the libellants' demand to the extent of the value of such fractional parts.

(5.) The opinion delivered at the Circuit did not adopt or support the views of the District Judge, but disposed of the case upon principles which, when correctly applied, must give the decree to the libellant.

The Circuit Judge leaves us the full doctrine of implied maritime lien, as reaching to a lender in such cases; but he errs in assuming that no lien was intended in this case, and

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in overlooking the rule that the lien arises from the nature of the transaction, and does not require any affirmative intention to raise it. He argues that because on a former voyage the master raised his disbursement money in the same mode, and no lien was enforced thereon, that no lien was intended in the second case; but the evidence is free from all conflict, obscurity, or doubt in this matter, and shows that the bill of exchange drawn for the first voyage was paid, and therefore no possible opportunity occurred for enforcing the lien. It is shown that such disbursement bills were understood to carry a lien; that the parties in the first case, as well as the second, dealt under that rule and understanding, and that the first bill was cashed by takers who, in view of such lien, were assured that it was "good" (p. 42, fol. 107.) The lien was then and thus recognized, and there is not a trace of evidence to show that the lien was waived, or disregarded, or disowned. If the first bill had been dishonored, the vessel would have been libelled for payment, and the lien for the advances then made would have been enforced. In the absence of proof that the money lenders, in either case, intended to rely wholly on a bill of exchange drawn by an irresponsible ship-master upon parties in Europe, on time, with no assurance of acceptance or payment, and with no security by insurance, such a reckless scheme cannot be presumed. There was not even the extra interest stipulated for, which uniformly attends loans on a marine risk of payment. This money must have been advanced on the faith of the lien. No merchant would advance $4,000 to a ship, for necessaries, taking worthless paper for it, without relying on the lien which the law gives him as resulting from his thus meeting the necessities of the ship.

The proof affirmatively shows that this lien was thought of, agreed to, and valued on at the time of the loan; and no one ever thought of questioning it until the present claimant, whose title is so peculiar and suspicious, came in with his answer.

CHARLES TRACY,
J. ANGUS MANNING,
Of Counsel for Appellants,

N. Y. DISTRICT COURT.

MAGIN PUIG *et al.*,

vs.

THE SHIP "JAMES GUTHRIE," &c., and JAS. W. PHILLIPS,

Clmt.

Opinion,

Heard March Term, 1861.

BETTS, J.: It seems to me that the determination of two points of law presented in this case, must necessarily dispose of the issues between the parties, and that a wearisome review of the mass of evidence, oral and written, produced upon the hearing, may be dispensed with, without prejudice to either party. It can be of no practical use to analyse and weigh that evidence, until the question of the plaintiffs' right to a recovery in the action upon general principles of maritime law is ascertained and decided. The full details of the proofs will supply no essential aid in that inquiry, because the libellants do not attempt to prove that their debt accrued from advances or undertakings by them to the master, to enable him to procure supplies or repairs to the ship, whilst she was under preparation for a voyage, but rests upon an advance of moneys made by them to discharge such debt previously contracted by the master of the ship, and satisfied to him by his consignee in a confidential and personal loan.

The questions of law are:

(1.) Was the subject matter of the suit a lien under the rules of the maritime law, upon the vessel when the money was advanced by the libellants, or this action was instituted? or, (2,) did it become such lien by force of a special custom or usage in the port of Mobile, at the time the plaintiffs acquired the bill of exchange, or demand upon which the action is founded?

The facts which raise these points may be stated very concisely, and are not subjects of controversy between the parties.

In October, 1854, Page and Allen, of Virginia, were owners of $\frac{31}{32}$ parts of the ship, and Chase, her master, owned $\frac{1}{32}$, the remaining fractional share. On the 19th of that month she was in her home port, Portsmouth, Virginia, and was then chartered by her master in New York to Stewart & Murrell, of Mobile, for two voyages, from Mobile to France or Spain, to transport cargoes of naval timber on those voyages, to be supplied by the charterers. The ship to be furnished and manned by the owners, and was consigned to the charterers in Mobile, to be laden with them there for the agreed voyages. The ship performed the first voyage stipulated in the charter, and returned to Mobile again consigned to Stewart & Murrell in Jannary, 1856, and was fully laden and freighted by them, pursuant to the charter, for her second voyage, this time to Cadiz, she was fitted and supplied by the master, and ready for sea March 22d, 1856, and cleared the 23d or 24th of that month, and proceeded to sea on her voyage within a day or two thereafter; her freight bill for the voyage being valued at £2,519 10s. 6d. sterling. It was stipulated in the charter party, that the master should be paid at the port of discharge, such portion of his freights as he might want for his disbursements.

The master defrayed the disbursements made in Mobile by him, in fitting out the ship on her first voyage to France, by his own draft on his consigners there against the freight money payable at that port. And in the completion of the lading of the ship at Mobile for her second voyage, he made application to his consignees there for means to meet his expenses, in obtaining supplies, repairs, &c., in preparing her for this voyage. He informed his consignees that he was forbidden to resort to the owners for such means, and that he possessed none within himself other than by loan or recourse to the freights to be earned in the voyage. His consignees were unable to make the loan to the master, asked by him, and also said it could not be

obtained in Mobile, but advised the master that his bill of exchange drawn upon the consignees of the cargo at Cadiz, against the freight, could be negotiated in market at New Orleans for the amount required. The consignees further agree to advance temporarily to the master, as a loan to him personally (until discount of such bill could be obtained in New Orleans) $4,000, which was to be reimbursed them out of such proceeds when obtained. The advance was accordingly taken by the master from such consignees, with which the expenses incurred by the ship were discharged by him, and she departed on her voyage a day or two afterwards, and within a few hours subsequently she encountered disasters at sea by which she was prevented delivering the cargo to the consignees at Cadiz, the port of discharge, and the freight money was never collected or received by the consignees there, and the bill drawn against it was, on presentation to them, protested for non-acceptance, and, at its maturity, for non-payment, and was paid at Cadiz *supra protest* for the honor of the endorsers and remitted to them.

Pursuant to the advice of the consignees at Mobile, the master drew a bill of exchange, dated the 23d March, 1856, in favor of the libellants, for $4,000, at 90 days, on his consignee at Cadiz, against his freight moneys, to be collected by them at that port, advising the libellants in his letter of application for the discount of his draft, that the freight moneys would be insured by his consignees at Cadiz, to cover the acceptance of this draft. The same notice was repeated to the libellants by Murrell, one of the consignees, at Mobile, before he made application to them for discount of the bill in behalf of the master, and on those representations, the libellants discounted the bill, and then paid the proceeds to Townsend & Murrell, out of which the loan to the master by them was satisfied. The bill of exchange was transmitted for acceptance and payment to the consignees at Cadiz, by Townsend & Murrell, for the master, with instructions to insure the freight, and satisfy the bill.

The claimant acquired title to the whole ship, except the share of Captain Chase, before he had any notice of the claim of the libellants against her. These particulars are

all that it is deemed necessary to collect from the papers in the cause, in order to meet the cardinal inquiries, whether the bill of exchange presented upon, acquired a lien upon the ship pursuant to the title of the claimant.

(1.) There is in this case no controversy upon the general proposition, that a sea-going vessel obtaining supplies, materials, or refitment in a foreign port, on credit at the instance of her master, which are necessary to enable her to prosecute her business, becomes subject to a lien therefor, by implication under the maritime law, if the master or owner had no funds or credit at the place sufficient to meet her necessities, such charge upon the ship is special and specific in character, and only arises in favor of parties who furnish the supplies, materials, &c., directly to the vessel, or advance money or credits as a means of procuring them, before delivery to the use of the vessel, and in contemplation of a right of resort to her liability as security for such advances. (Abbott on Shipping, 142, and Perkin's notes, 3 Kent, 169, (6th edition); Flanders on Maritime Law, § 238, 240; 1 Parson's Maritime Law.)

I think it a cardinal ingredient to a right of implied lien upon the vessel that her responsibility should appear to have been in view by the material men when they furnished the labor, supplies, or materials for her benefit, or by the parties who advanced money to procure such betterments, and that the privilege can only be enforced in favor of a party who proves that his funds or credit were the promoting means of the advances, or services, bestowed upon the ship. The decision of the U. S. Supreme Court evidently regard it as an essential requisite to the existence of an implied lien upon a ship, resulting from any dealings of the master in procuring a loan of money or credit for her service, that the necessity therefor should then be immediate, and one which could be supplied at the time by the master, only by such charge or responsibility of the vessel. (The ship *General Smith*, 4 Wheat, 438; *Thomas* v. *Osborne*, 19 How., 22; Pratt *vs.* Reed, 19 How., 357.)

The evidence in this case represents the vessel as being in a state of full repair, ready to go upon her voyage, before any application was made by the master for funds or

credit. The master, after the ship had received her repairs and supplies, and was prepared to take her clearance, made known to his consignees at Mobile that he was indebted for those expenses, and required $4,000 advance to discharge the debt, and wished to obtain that amount from them. Mr. Murrell (the consignee applied to) could not give him the accommodation asked for, and suggested to the master that he should draw a bill on his consignees at Cadiz (Abarzuza & Bros.) against the freight payable there on delivery of the cargo, and that he (Murrell) would advance to the master the sum required by him, temporarily, receiving a reimbursement of such loan from the proceeds of the bill, which he undertook to negotiate for the master in New Orleans. The arrangement was carried into immediate execution. He delivered $4,000 to the master on such loan, who satisfied with it the debts of the ship. The bill of exchange for $4,000 was drawn the same day, the 22d of March, 1856, on Abarzuza & Brothers, his consignees abroad, against the freight of the cargo consigned to them. It was made payable to the libellants or order, and was the same day inclosed in a letter addressed to them by the master (and given by him, with such letter, to Murrell), advising them that he had ordered his consignees abroad to insure such freight, and Murrell negotiated with the libellants the sale of the bill to them. Murrell testifies that the master told him the bill carried with itself a lien upon the ship, and he so informed the libellants when they discounted it. They paid the amount, with the deduction of interest, to Murrell, and he satisfied out of the balance the loan which he had made to the master.

I think it plain from this evidence that when the bill against the freight was offered for discount, and was purchased by the libellants, there was no outstanding liability of the ship for repairs or supplies subsisting which could, within the principle of the maritime law, be made to enure as a charge or lien *per se* upon the ship. That original debt had been satisfied and extinguished by the master by means of the personal loan to him from Murrell, for which Murrell never had obtained or asked the direct security of the vessel. If this transaction with Murrell created a debt from the master and owners jointly to him, and could have

been assumed as accruing also against the ship, by authority of the master *alone*, that end must have been effected by bottomry or other express hypothecation. No such pledge of the ship, or lien upon her, would be implied merely from the fact that money had been borrowed by her master to satisfy debts outstanding against the ship, unless the holder of the new debt acquired and held it as assignee and substitute of those in whose hands it had been clothed with a privilege against the ship, neither can their condition in this respect be strengthened derivatively through any authority conferred on Murrell by the master, as his broker in negotiating the bill. I accordingly think that, under this branch of the case, the libellants fail to show any lien in their favor against the ship which will uphold this libel. (2.) The suit is claimed, on the part of the libellants, to be maintainable under the second proposition in the case, which is, that this being a bill or draft representing the amount of disbursements expended in supplies and repairs to the ship, carried with it, by its own efficiency, a lien on the ship for the satisfaction of its amount; that is, that the fact that debts for that cause, in the aggregate to the amount of $4,000, having once subsisted, any person who should pay the debt might convert the sum into negotiable paper, which would carry with it, in its circulation, a lien or privilege against the ship, correspondent in all respects to that possessed by the original creditors in the inception and completion of the various portions of the indebtment to them severally. The libellants connect themselves in no way as assignees of the primary creditors. The titles and interest of the original creditors in the debts were fully paid off and satisfied by the master; or, at furthest, by the voluntary advance of money by Murrell to the master, neither of whom took or claimed a transfer of any lien acquired by those creditors originally. No rule of the maritime law or any authority sanctioning the doctrine set up is produced, further than a supposed local practice, limited, so far as appears, to Mobile alone, which is spoken of by several witnesses as prevailing at that port, and I cannot regard that sufficient evidence to justify my adopting the practice as one resting on principle or called for by expediency. I think, therefore, that this point has not been sus-

tained by that degree and order of evidence required to fix and legalize a custom which contravenes or extends beyond established principles of general law (schooner *Reedside*, 2 Sumn. R., 567; Dinnell *vs.* Columb. Ins. Co., 2 Sumn., 377); and, indeed, the permission to invoke the evidence of usage is rather applicable to the interpretation of the language of contracts, than to establish doctrines and rules of decision. (3 Kent, 6th Ed., 260, note d.)

I do not discuss the objections to the action taken by the claimant, on account of its staleness, or his position as a *bona fide* purchaser of the ship, a long period after the right of action set up by the libellants had accrued, if one existed at all, and I put the decision upon the ground that the libellants do not make out, under the law maritime, a right to subject the ship in kind to the satisfaction of their demand.

Libel dismissed with costs.

UNITED STATES CIRCUIT COURT,

Southern District New York.

Puig, Mir & Co.,
vs.
The Ship James Guthrie.

} Opinion of Circuit Judge.

The libel in this case was filed to recover the amount of a bill of exchange drawn by the master of the vessel. The facts were, that the vessel was chartered by Stewart and Murrell, of Mobile, in October, 1854, for two voyages from that place to France or Spain. She went on the first one to Toulon, the master paying the disbursements of her outfit, by draft on his consignees at Toulon against the freight. She then returned to Mobile, and was loaded for a voyage to Ferrol, Spain. Her master had no funds to meet this second outfit, and Stewart and Murrell could not make him a loan for it, but on their advice he drew a draft on his consignees against the freight, which Stewart and Murrell procured to be negotiated for him by the libellants, who did

business in New Orleans, making a temporary loan to the master, until they received the proceeds of this draft. The vessel sailed on her voyage, but met with accident, and was prevented from delivering her cargo, so that the freight was never paid, and the master's draft was protested. The libellants, in this suit, endeavored to collect it out of the ship as being a loan to her. The Court below dismissed the libel, and the libellants appealed.

NELSON, C. J.: We are of opinion the proofs show that the libellants acquired no lien upon the vessel on account of an advance of money for her disbursements at the port of Mobile for supplies, repairs, &c.; their whole scope leads to the conclusion that all parties, Murrell, the charterer and consignee of the vessel at Mobile, and the libellants who were interested with him in the adventure to Ferrol, Spain, looked to the bill of exchange drawn by the master on his consignee in Spain against the freight. The disbursements on the previous voyage to Toulon, France, under the same charter, were raised by bill on the consignees of the vessel against the freight, and the same means were adopted in the present shipment. The disaster attending this second voyage has led to this attempt to charge the vessel. The transaction stripped off the coloring thrown around it from the changed condition of the interests of the parties as a consequence of the disaster at the Tortugás is, that Murrell, the charterer and consignee, advanced the money temporarily to the master until he could negotiate the bill of exchange against the freight in New Orleans, through the house of the libellants, which was done. What confirms this view is, that these parties seem to have understood the law to be that a bill of exchange drawn by the master for disbursements of his ship constitutes a lien against it in the hands of anyone making advances upon the bill. In this bill an advance upon the credit of the ship was not material. We do not agree that there is any such custom at Mobile or elsewhere, which can set aside the established principles of law.

We have not looked into the question as to the extent of the title of the ship in Phillips, the claimant, as we are satisfied that no lien attached to it at all for the disbursements. Decree affirmed.

Supreme Court

OF THE UNITED STATES.

THE SHIP "JAMES GUTHRIE" &c., JAMES W. PHILLIPS,

Claimant, Respondent,

ads.

MAGIN PUIG AND OTHERS,

Libellants and Appellants.

MR. EVARTS' BRIEF

For Respondent.

NEW YORK:
WM. C. BRYANT & CO., PRINTERS, NASSAU ST. COR. LIBERTY.

1865.

U. S. Supreme Court,

IN ADMIRALTY.

THE SHIP JAMES GUTHRIE, &c., JAMES W. PHILLIPS, Claimant and Respondent,

ads.

MAGIN PUIG, RAMON MIR and JUAN BATISTA SOULERE, Libellants and Appellants.

STATEMENT and POINTS of Respondent on Libellants' Appeal from the decree of the District Court in Admiralty.

Statement.

The libellants, merchants of New Orleans, filed their libel on the 27th day of January, 1857, against the ship *James Guthrie*, to enforce a supposed lien which they claimed had enured to them, as the purchasers and holders of a bill of exchange for $4,000, at sixty days' sight, drawn against the freight, by the master, at Mobile, March 22d, 1856, upon the consignees of the ship, at Cadiz, in Spain, whither she was then bound with a cargo.

Upon the trial below, it appeared that in the month of October, 1854, the ship *James Guthrie*, then lying at Portsmouth, Va., and belonging to Page & Allen, of that

port, was chartered to Joseph E. Murrell, of Mobile, and Charles T. Stewart, for two voyages, from Mobile to one of certain specified ports in France and Spain, to be determined by the charterers, the charterers to furnish full cargo on the voyages, and to pay such portion of the freight as the master might want at the port of discharge for disbursements, in cash at current rates, without discount or commission, and the balance on delivery of the cargo on termination of each voyage. Under this charter the ship had performed one voyage from Mobile to Toulon, France, in 1855; for which voyage her cargo of timber had been supplied by the charterer, Stewart, on account of a contract which he had with the French government. She arrived at Mobile, on her return from that voyage, in January, 1856, consigned to the charterer, Joseph W. Murrell, who immediately proceeded to load her with masts and naval timber, to fill a contract with the Spanish government, Puig, Mir & Co., the libellants, being interested with him in the charter, and in the shipment of the cargo for Spain. On the 22d of March, the ship was loaded and entirely ready for sea. On the same day she cleared from Mobile for Ferrol, in Spain, and set sail on that voyage on the 26th. On the 29th she was wrecked on the Tortugas shoal, and the further prosecution of the voyage prevented. Her freight bill for the voyage was valued at £2,519 10*s.* 6*d.* stg.

Upon the previous voyage made under the charter from Mobile, for Toulon, the master had obtained the means to defray the bills of the ship for outfit and supplies, by negotiating in Mobile his bill drawn upon the consignees at Toulon, against the freight to be collected by them, and which they were instructed to insure to an equal amount. This had been done at the suggestion of Joseph W. Murrell, the charterer, who assured the takers that the bill was good. On that voyage the freight was insured in France by the consignees, as directed, and the master's bill upon them was accepted, and at maturity paid. Upon the second voyage (to Ferrol) when the ship was ready for sea, the master represented to Murrell, the consignee, that he had bills to pay for repairs and supplies to the amount of four thousand dollars, and that he could not get his ship away

from Mobile until they were satisfied. The consignee suggested that he should draw upon his owners, to which he replied, that he could not do so, and that he was directed by his owners to draw against the freight upon his consignees, in Spain. To enable the master to pay the ship's bills and sail, the consignee lent him, as a personal temporary loan, four thousand dollars, the amount required. And thereupon the master drew upon Abarzuza Brothers, at Cadiz, the consignees of the vessel in Spain, a bill of exchange, of which the following is a copy:

Mobile, March 22d, 1856.

"Sixty days after sight of this first of exchange, second and third unpaid, pay to order of Puig, Mir & Co., four thousand dollars value received, and charge the same to account of freight of American ship *James Guthrie*, of Ferrol.

STEPHEN CHASE.

To Messrs. ABARZUZA & BROTHERS,
Cadiz."

This bill he delivered to Murrell, the consignee, upon the understanding that he should negotiate it in the market, and out of the proceeds reimburse himself for the money advanced to the master. At the same time the master wrote a letter to Abarzuza Brothers, informing them that he had so drawn upon them for $4,000 on account of the freight, and instructed them to effect insurance on the freight to a sufficient amount to cover the draft with difference of exchange and expenses. On the next day, March 23d, Murrell sent the bill to the libellants at New Orleans, who were interested to the extent of two-fifths in the cargo, and the voyage to Ferrol, to sell, and requested them to negotiate the same, advising him of the rate of discount at which they might sell it, and at the same time assured them that in case of any accident Page & Allen, the owners, were good for the amount. The libellants bought the bill themselves at par, and indorsed and sold it in the ordinary course of business in the market of New Orleans. Murrell obtained payment for it, which reimbursed his advance to the master by drawing upon the libellants on the

24th of March for four thousand dollars, at thirty days sight, that time being given to enable them to negotiate the bill. That draft of Murrell's was paid by the libellants at its maturity. In the whole course of the transaction the libellants knew nobody but Murrell, and had no communication with the master. The temporary loan made to the master by Murrell was upon the master's personal credit. Murrell took the bill as security for its reimbursement, and the libellants purchased it as an ordinary business transaction upon the credit of thirty days, limited by their acceptance of Murrell's draft. The letter of the master to Abarzuza Brothers, of March 22 l, advising them of the draft, and instructing them to insure the freight to cover it, was written in duplicate, both parts being delivered on the day of its date, to Murrell, who immediately forwarded one part to Cadiz, where it was received in due course of mail by Abarzuza Brothers, prior to the twenty-eighth of April, and the other part was sent by Murrell to the libellants with the draft, and they immediately forwarded it to Abarzuza Brothers. They refused to accept it, upon the ground as stated in their letter to the libellants of the last named day, that according to the laws of Spain no freight is due or earned until after the faithful delivery of the cargo, but promised to take it up after protest for the honor of the libellants, as first indorsers. They were also unable to effect insurance on the freight as directed by the master, because the laws of Spain do not permit insurance on freight. But they immediately transferred the order to insure to a friend of the libellants in London, requesting him to protect the interests of the libellants. By that time, however, news had reached London of the catastrophe to the *James Guthrie* and of the breaking up of her voyage, which prevented the insurance being effected there. The master's draft was protested in Cadiz for non-acceptance, and afterwards, on the thirty-first day of July, 1856, for non-payment, but was subsequently paid by the drawees, as they had agreed for the honor of the libellants as first indorsers, to whom it was afterwards remitted. After hearing of the protest of the draft for non-acceptance, and under date of June 3d, 1856, they advised Page & Allen of that fact, and notified them as owners of ship *James Guthrie*, and Capt.

Chase as master, that they will be looked to for the amount of the draft, with damages and interest, but no intimation appears to have been given to Page & Allen, at any time, that the libellants looked to the ship itself or to any lien upon it as security for the draft. By a subsequent letter under date of July 24th, 1856, the libellants repeated their demand for payment of the bill, with costs of protest entered and ten per cent. damages, and requested them to pay the amount to Joseph E. Murrell, of Mobile, from whom they had taken the draft.

James W. Phillips, the claimant, acquired title to twenty thirty-seconds of the vessel by bill of sale from Page & Allen on the seventh day of August, 1856, and of eleven thirty-seconds more by another bill of sale from Page & Allen on the twentieth day of September, 1856, before he had any notice of any lien upon her being claimed by the libellants.

The *James Guthrie* was at Key West from the twelfth day of April, 1856, until some time in the month of July in that year; she was at the port of New York from the 27th day of July to the twenty-second day of August, 1856; she then left the United States and returned to New York in January, 1857; at that time the libellants having failed in their efforts to collect the amount of the draft from the master and from Page & Allen, caused her to be seized under this libel.

There is no evidence in the case showing what repairs and supplies, or whether any repairs or supplies were furnished to the ship in Mobile, prior to the voyage in question, except ship chandlery, to the amount of $1,200, nor what application Captain Chase made of the money loaned to him by Murrell, the consignee, nor that the owners were without credit in Mobile. Captain Chase, however, when he drew the draft in suit, was the owner of one thirty-second part of the ship.

The draft was negotiated by the libellants to Cahuzac Brothers, of New Orleans, on the twenty-sixth of March, 1856, and by them it was sold and endorsed in Havana, on the thirty-first day of March, two days after the wreck of the vessel, to Don Capriano Lopez Martinez, of Cadiz, to

whom, as the owner at the time of its maturity, it was paid by the drawees.

Evidence was offered by the libellants of several merchants resident in Mobile, who testified that, in their opinion, each successive purchaser of a bill drawn by the master, under the circumstances of the bill in suit here received therewith, a lien upon the vessel, to the amount advanced by the holder upon the bill, but no instance was given of any such lien being enforced.

Points.

First Point.—The ground-work of the libellants' claim must, of course, consist in the presumed existence, at Mobile, on the 22d March, 1856, of such circumstances as required the creation by the master, of a maritime lien on the ship by an hypothecation express or implied, in order to procure necessary repairs or supplies, which could be had by no other means. The libel alleges that then and there it was found to be necessary that she should be furnished with certain provisions, stores, supplies, and other necessaries, in order to render her sea-worthy and fit to go to sea on said voyage, but the evidence falls far short of proof of such necessity.

Pratt *vs.* Reed, 19 How. U. S., 359.
Thomas *vs.* Osborne, Ib., 22.

For—

1st. It is clear that, at the time and place specified, the ship was in need of nothing to enable her to prosecute her voyage, She was all ready for sea, cleared for the port whither she was bound. Nothing on or after the date was supplied or added to her stores or equipments, and nothing bestowed upon her to make her sea-worthy. So far as the ship was concerned, nothing remained to be done before sailing, but the master owed debts which he was not in funds to pay. An

advance to the master, to enable him to pay for supplies already procured, creates no lien upon the ship, because the advance is not the promoting means of satisfying the needs of the ship.

Abbott Shipg., 142–3, note and cases cited.

2d. But, if the master is justified in hypothecating the vessel to obtain money to pay for supplies, the previous purchase of which would have justified or required it, still, in that view, the proofs wholly fail to show that any such purchase had been made, for in order to create a maritime lien for supplies furnished, there must be a present necessity for the supplies themselves; it must also appear that they could be procured only by a credit on the vessel, and the money borrowed to defray such charges must have been applied to the discharge of them, and of no other expenses. There is evidence of but three items of debt to which the master applied any part of the four thousand dollars borrowed of Murrell. 1st. To the repayment to Murrell of one hundred dollars previously borrowed of him (Fol. 342.) 2d. To the payment of a stevedore's bill of seven hundred dollars. 3d. To the payment of the ship-chandler's bill, twelve hundred dollars. As to the one hundred dollars loaned, it will not be pretended that it created a maritime lien. As to the stevedore's bill, it has been repeatedly decided that stevedores never have a maritime lien for their services, because their contracts are not maritime contracts, but ordinary agreements for work and labor; as to the ship-chandler's bill, there is no evidence that it was paid for out of the moneys borrowed from Murrell; nor does it appear when it had been purchased, nor that when procured the vessel needed it.

The *Joseph Cunard*, Olcott, 120.
The *Ainstel*, 1 Bl. & How., 215.

3d. But as to the ship chandler's bill, the more serious difficulty on the part of the libellants is the entire absence of any proof to show that there was also a necessity at the time of procuring the supplies for a

credit upon the vessel. This proof is as essential as that of the necessity of the article itself. (Pratt *vs.* Reed, *ub. sup.*) They were furnished at a port very near the home port of the vessel, and the owners there were in good credit. Nor is it suggested that the ship chandler looked to anything but their credit and that of the master. He, too, had the means of credit in himself, for he owned one thirty-second of the vessel. The vessel was in the hands of her consignee and charterer, who represented the ownership of the whole cargo, and was willing to advance temporarily the money which the master called for. Though expressly forbidden to draw bills on his owners, he does not appear to have been restrained by them from purchasing necessary supplies on their credit, and that they have credit in Mobile is plain from Murrell's writing to the libellants that they were, in case of accident to the freight, good for the amount of the master's draft. Moreover, the undisputed facts that the master was able to borrow four thousand dollars temporarily without interest, and that he could resort to the future freight and negotiate large bills drawn against it at par, show clearly that for a bill of twelve hundred dollars a resort to the credit of the ship was not necessary.

We confidently contend, therefore, that while the vessel was in Mobile preparing for the voyage to Ferrol no such circumstances existed as made it necessary for the master to impose upon the vessel a maritime lien in order to prosecute his voyage.

Second Point.—If, for argument's sake, the case is to be considered as though the master in Mobile prior to the 22d of March, 1856, had purchased supplies indefinite in amount, except as to the $1,200 for ship chandlery, which constituted liens upon the ship enforceable by those who had furnished the supplies, did

the subsequent transactions operate to transfer to the libellants such liens, or give to them as holders of this draft a new and substituted lien for the amount of it?

A. The original liens, if any existed, were not assigned or transferred to Murrell. They were extinguished by the payments made by the master with the money borrowed from him.

The master being himself a part owner, and with authority from the other owners limited to the hypothecation of the freight to be earned on the projected voyage to Spain, applied to Murrell as consignee and charterer, who, as such, was largely interested in the voyage in prospect, for means to enable him to proceed upon it, and informed him of his owner's instructions. Murrell declined either to pay the ship's outstanding bills, although he might by so doing have taken a transfer to himself of the liens upon the ship which they represented, or to purchase the bill proposed to be drawn against the freight, but anxious for the speedy departure of the vessel, he loaned to the master upon his personal credit, and the collateral security of the draft, the sum required for his expenses, with which money the master discharges every existing liability of the ship. No communication took place between Murrell and the holders of the claims thus paid, and there was no attempt or intention to transfer to Murrell or to keep alive the original liens. They were simply extinguished, and Murrell looked only to the master and owners and to the proceeds of the bill left with him to be negotiated and neither had, nor expected to have, any lien on the ship. His whole claim was completely discharged by the libellant's acceptance of his sight draft for his reimbursement.

B. Puig, Mir & Co., the libellants, stand in no better position, and have no larger security than Murrell had, except the master's draft. They made no advance to the master, and had no dealings with him. Upon this point the facts found in the decision of the Judge of

the District Court are fully sustained by the proofs. They purchased the draft from Murrell upon his representations that the freight was to be insured in Europe, and that in case of accident the owners were good for the amount. They never looked to the vessel or to any other security than the personal liability of the master and owners, and to the freight which was specifically pledged. They were distant from the vessel, and could have no knowledge of the existence of any circumstances which would authorize the master to hypothecate it. They were strangers to the holders of the original liens, and took nothing from them. Their only payment or advance of money was to Murrell or to the holder of his draft upon them at thirty days sight; and when the master's draft was received by them there was no outstanding lien upon the ship.

C. An attempt was made by the consignee, Murrell, and by Johnson, his clerk, upon their examination as witnesses under the second commission issued to Mobile, to give a different version of the transaction, under the pretence that Murrell's advance of four thousand dollars to the master was made by him on account of the libellants, under instructions from them, and was in reality a direct advance from the libellants to the master, to enable him to pay his ship's bills. But a careful examination of these second depositions will show that instead of stating new facts, they but give a new construction to the facts stated by them before, which construction is entirely at variance with their previous testimony, and with the letter of Murrell to the libellants covering the drafts, and to the testimony of the witnesses examined in New Orleans, who belonged to the libellants' house there—all which agree and establish the fact that the libellants made no advance to the master and took no part in the transaction, except to buy the bill upon Murrell's representations, and to sell it in the market for their own reimbursement. Their part in the business consisted in the performance of the ordinary functions of note-brokers, buying the draft and selling it in the market

at the prevailing rates, and they never received or parted with anything but the bill itself and such securities for its payment as its terms imported.

D. The relations of Murrell and of the libellants to the ship and her owners negative the idea that either of them looked to a lien upon the vessel, as connected with or represented by the master's draft upon the freight. They were the charterers of the vessel for the voyage immediately in prospect. The ship had on board their cargo, of which Murrell owned three-fifths and the libellants two-fifths, and in those proportions the freight payable at the termination of the voyage would be chargeable to them. The charterers were bound to advance to the master such portion of the freight as he might want at the port of discharge for disbursements. Murrell's advance to the master, therefore, reimbursed to him by the libellants, may be very justly regarded as an advance made on account of the freight which would become payable by the charterers at the termination of the voyage to Spain.

Third Point.—There is no rule or principle of maritime law which confers upon the purchaser or holder of a bill of exchange drawn by the master against the freight, to provide means for paying the ship's disbursements, a lien upon the vessel, in the event of a disaster which prevents the freight being earned, or in any other event. The bill of exchange itself contains the whole contract of the master and of the owners in whose behalf he drew it. It contains no hypothecation of the vessel or reference to it, but as construed by universal mercantile usage, it expressly limits the payees and subsequent holders to the personal liability of the master and owners and to the freight to be earned, as the sole source of payment.

(*a.*) The libellants contend that this negotiable instrument, which contains nothing but a substantial pledge

of the freight, carries with it, as it passes from hand to hand among those who never knew the vessel or the circumstances in which the draft originated, an express lien upon the hull of the vessel. If the falsity of this proposition can be shown more clearly than by the naked statement of it, it is by the history of this very bill: Murrell, the consignee at Mobile, knew the ship, but declined to pay for the repairs and supplies, by which he would have a lien upon her to the amount advanced. He preferred to lend the master four thousand dollars, as a personal loan, and took this bill against the freight, to reimburse himself by its sale. He sold it to the libellants in New Orleans. They negotiated it in the market to Cahuzac Brothers, of Havana, who, for aught that appears, never heard of the ship, and they, at a time when the ship was lying a hopeless wreck on Tortugas shoal, sold it in Havana to Martinez, of Cadiz.

(*b.*) Even if the draft bore upon its face any words which might be construed into an express hypothecation of the ship, it would be of no effect, because, in every view of the case, such an hypothecation exceeded the power of the master. The amount of the bill was far greated than any maratime lien claimed to have been existing against the ship, and which the master had to pay off before sailing. The need to raise twelve hundred dollars, to pay the ship's chandler's bill, did not justify an express hypothecation of the ship for four thousand dollars, so that the entire act was unauthorized.

(*c.*) The attempt made to fasten upon the ship as a lien, the additional penalty of fifteen per cent., inflicted by the statutes of Alabama upon the drawers there of bills of exchange in Spain which are returned protested, is preposterous, and only illustrates the absurdity of the principal claim upon the bill itself. It is but a contrivance to inflict upon the vessel *in rem.*, a liability which the law has imposed upon the parties to the bill in *personam.*

Fourth Point.—The evidence of the several witnesses at Mobile as to the alleged existence of a usage there, for persons advancing money to the master of a vessel, to enable him to pay off the outstanding debts of the ship, to have a lien on the ship commensurate with the original liens so discharged, and to negotiate the same by a transfer of the master's bill, is not entitled to any weight.

For 1st. It is not sufficient to prove the existence of any such usage; not a single instance is given of any such lien being enforced or imposed.

And 2d. If the evidence were sufficient to show a common understanding and practice among the merchants of Mobile to that effect, such a limited and local usage could not avail to establish doctrines of maritime law, upon which alone the question of lien for supplies to a foreign ship depends.

The Reeside, 2 Sumn., 567.
Donnell *vs.* Col. Ins. Co., Ib., 377.

Fifth Point.—James W. Phillips, the claimant, subsequent to the transaction upon which the libellants' supposed right of action arose, acquired title to the interest in the ship which he claims, viz: to twenty thirty-seconds of said ship by bill of sale of Aug. 7th, 1856, and to eleven thirty-seconds, on Sept. 20th, 1856.

The evidence of Durant, which seeks by a conversation with Phillips to reduce his interest to that of a limited amount of some ten thousand dollars, fails to disparage the title of Phillips, as shown by the bills of sale. Durand's evidence finally comes to nothing more than that he gathered from Phillips' conversation, "that he had purchased a part of the vessel, and had been paying the expenses at Key West."

Between the time of the transaction in Mobile, in March, 1856, and the time of the filing of this libel, in January, 1857, the ship had been in ports of the United States the

greater part of the time, as shown in the stipulation in this subject. The dishonor of the bill of exchange was known by the libellants as early as June, 1856.

If the lien ever rested on the ship, it has been lost by change of title, and by the laches in enforcing the lien.

The scow *Bolivar*, Olcott, 474.

Leland *vs.* ship *Medora*, 2 Woodb. & M., 104.

Sixth Point.—The decree below must be affirmed, with costs.

EVARTS, SOUTHMAYD & CHOATE,
Proctors for Respondent.

WM. M. EVARTS,
Advocate.

N. Y. DISTRICT COURT.

MAGIN PUIG, *et al.*, *vs.* The Ship *James Guthrie*, &c., and JAS. W. PHILLIPS, Clmt.	Opinion.

BETTS, J.:—It seems to me that the determination of two points of law presented in this case, must necessarily dispose of the issues between the parties, and that a wearisome review of the mass of evidence, oral and written, produced upon the hearing, may be dispensed with without prejudice to either party. It can be of no practical use to analyse and weigh that evidence until the question of the plaintiffs' right to a recovery in the action upon general principles of maritime law is ascertained and decided. The full details of the proofs will supply no essential aid in that inquiry, because the libellants do not attempt to prove that their debt accrued from advances or undertakings by them to the master, to enable him to procure supplies or repairs to the ship, whilst she was under preparation for a voyage, but rests upon an advance of moneys made by them to discharge such debt previously contracted by the master of the ship, and satisfied to him by his consignee in a confidential and personal loan.

The questions of law are:

(1.) Was the subject matter of the suit a lien under the rules of the maritime law upon the vessel when the money was advanced by the libellants, or this action was instituted? or, (2,) did it become such lien by force of a special custom or usage in the port of Mobile, at the time the plaintiffs acquired the bill of exchange or demand upon which the action is founded.

The facts which raise these points may be stated very concisely, and are not subjects of controversy between the parties.

In October, 1854, Page and Allen, of Virginia, were owners of $\frac{3}{64}$ parts of the ship, and Chase, her master,

owned $\frac{1}{32}$, the remaining fractional share. On the 19th of that month she was in her home port, Portsmouth, Virginia, and was then chartered by her master in New York to Stewart & Murrell, of Mobile, for two voyages from Mobile to France or Spain, to transport cargoes of naval timber on those voyages, to be supplied by the charterers. The ship to be furnished and manned by the owners, and was consigned to the charterers in Mobile, to be laden by them there for the agreed voyages. The ship performed the first voyage stipulated in the charter, and returned to Mobile again consigned to Stewart & Murrell, in January, 1856, and was fully laden and freighted by them, pursuant to the charter, for her second voyage, this time to Cadiz, she was fitted and supplied by the master, and ready for sea March 22d, 1856, and cleared the 23d or 24th of that month, and proceeded to sea on her voyage within a day or two thereafter, her freight bill for the voyage being valued at £22,519 10s. 6d. sterling. It was stipulated in the charter party that the master should be paid at the port of discharge such portion of his freights as he might want for his disbursements.

The mtaser defrayed the disbursements made in Mobile, by him, in fitting out the ship on her first voyage to France, by his own draft on his consignors there, against the freight money payable at that port. And on the completion of the lading of the ship at Mobile for her second voyage, he made application to his consignees there for means to meet his expenses in obtaining supplies, repairs, &c., in preparing her for this voyage. He informed his consignees that he was forbidden to resort to the owners for such means, and that he possessed none within himself other than by loan or recourse to the freights to be earned on the voyage. His consignees were unable to make the loan to the master, asked by him, and also said it could not be obtained in Mobile, but advised the master that his bill of exchange drawn upon the consignees of the cargo at Cadiz, against the freight, could be negotiated in market at New Orleans for the amount required. The consignees further agreed to advance temporarily to the master, (as a loan to him personally) until discount of such bill could be obtained in New Orleans $4,000, which was to be reimbursed

them out of such proceeds when obtained. The advance was accordingly taken by the master from such consignees, with which the expenses incurred by the ship were discharged by him, and she departed on her voyage a day or two afterwards, and within a few hours subsequently she encountered disasters at sea by which she was prevented delivering the cargo to the consignees at Cadiz, the port of discharge, and the freight money was never collected or received by the consignees there, and the bill drawn against it was, on presentation to them, protested for non-acceptance, and, at its maturity, for non-payment, and was paid at Cadiz *supra protest* for the honor of the endorsers and remitted to them.

Pursuant to the advice of the consignees at Mobile, the master drew a bill of exchange, dated the 23d March, 1856, in favor of the libellants, for $4,000, at 90 days, on his consignees at Cadiz, against his freight moneys to be collected by them at that port, advising the libellants, in his letter of application for the discount of his draft, that the freight moneys would be insured by his consignees at Cadiz, to cover the acceptance of this draft. The same notice was repeated to the libellants by Murrell, one of the consignees at Mobile, before he made application to them for discount of the bill in behalf of the master, and on those representations, the libellants discounted the bill, and then paid the proceeds to Townsend & Murrell, out of which the loan to the master by them was satisfied. The bill of exchange was transmitted for acceptance and payment to the consignees at Cadiz, by Townsend & Murrell, for the master, with instructions to insure the freight, and satisfy the bill.

The claimant acquired title to the whole ship, except the share of Captain Chase, before he had any notice of the claim of the libellants against her. These particulars are all that it is deemed necessary to collect from the papers in the cause, in order to meet the cardinal inquiries, whether the bill of exchange proceeded upon, acquired a lien upon the ship pursuant to the title of the claimant.

(1) There is in this case no controversy upon the general proposition that a sea-going vessel obtaining supplies, ma-

terials, or refitment in a foreign port, on credit at the instance of her master, which are necessary to enable her to prosecute her business, becomes subject to a lien therefor, by implication under the maritime law, if the master or owner had no funds or credit at the place sufficient to meet her necessities. Such charge upon the ship is special and specific in character, and only arises in favor of parties who furnish the supplies, materials, &c., directly to the vessel, or advance money or credits as means of procuring them, before delivery to the use of the vessel, and in contemplation of a right of resort to her liability as security for such advances. (Abbott on Shipping, 142, and Perkin's notes; 3 Kent, 168 (6th edition); Flanders on Maritime law, § 238, 240; 1 Parson's Maritime law.)

I think it a cardinal ingredient to a right of implied lien upon the vessel that her responsibility should appear to have been in view by the material men when they furnished the labor, supplies, or materials for her benefit, or by the parties who advanced funds to procure such betterments, and that the privilege can only be enforced in favor of a party who proves that his funds or credit were the promoting means of the advances, or services bestowed upon the ship. The decisions in the U. S. Supreme Court evidently regard it as an essential requisite to the existence of an implied lien upon a ship, resulting from any dealings of the master in procuring a loan of money or credit for her service, that the necessity therefor should then be immediate, and one which could be supplied at the time by the master, only by such charge or responsibility of the vessel. (The ship *General Smith*, 4 Wheat, 438; Thomas *vs.* Osborne, 19 How., 22; Pratt *vs.* Reed, 19 How., 359.)

The evidence in this case represents the vessel as being in a state of full repair, ready to go upon her voyage, before any application was made by the master for funds or credit. The master, after the ship had received her repairs and supplies, and was prepared to take her clearance, made known to his consignees at Mobile that he was indebted for those expenses, and required $4,000 advance to discharge the debt, and wished to obtain that amount from them. Mr. Murrell (the consignee applied to) could not give him the accomodation asked for, and suggested to the master

that he should draw a bill on his consignees at Cadiz (Abarzuza & Bros.) against the freight payable there on delivery of the cargo, and that he (Murrell) would advance to the master the sum required by him, temporarily, receiving a reimbursement of such loan from the proceeds of the bill, which he undertook to negotiate for the master in New Orleans. The arrangement was carried into immediate execution. He delivered $4,000 to the master on such loan, who satisfied with it the debts of the ship. The bill of exchange for $4,000 was drawn the same day, the 22d of March, 1856, on Abarzuza & Brothers, his consignees abroad, against the freight of the cargo consigned to them. It was made payable to the libellants or order, and was the same day inclosed in a letter addressed to them by the master (and given by him, with such letter, to Murrell), advising them that he had ordered his consignees abroad to insure such freight, and Murrell negotiated with the libellants the sale of the bill to them. Murrell testifies that the master told him the bill carried with itself a lien upon the ship, and he so informed the libellants when they discounted it. They paid the amount, with the deduction of interest, to Murrell, and he satisfied out of the balance the loan which he had made to the master.

I think it plain from this evidence that when the bill against the freight was offered for discount, and was purchased by the libellants, there was no outstanding liability of the ship for repairs or supplies subsisting which could, within the principle of the maritime law, be made to enure as a charge or lien *per se*, upon the ship. That original debt had been satisfied and extinguished by the master by means of the personal loan to him from Murrell, for which Murrell never had obtained or asked the direct security of the vessel. If this transaction with Murrell created a debt from the master and owners jointly to him, and could have been assumed as accruing also against the ship, by authority of the master *alone*, that end must have been effected by bottomry or other express hypothecation. No such pledge of the ship, or lien upon her, would be implied merely from the fact that money had been borrowed by her master to satisfy debts outstanding against the ship, unless the holder of the new debt acquired and held it as

assignee and substitute of those in whose hands it had been clothed with a privilege against the ship, neither can their condition in this respect be strengthened derivatively through any authority conferred on Murrell by the master, as his broker in negotiating the bill. I accordingly think that, under this branch of the case, the libellants fail to show any lien in their favor against the ship which will uphold this libel. (2.) The suit is claimed on the part of the libellants, to be maintainable under the second proposition in the case, which is, that this being a bill or draft representing the amount of disbursements expended in supplies and repairs to the ship, carried with it, by its own efficiency, a lien on the ship for the satisfaction of its amount; that is, that the fact that debts for that cause, in the aggregate to the amount of $4,000, having once subsisted, any person who should pay the debt might convert the sum into negotiable paper, which would carry with it, in its circulation, a lien or privilege against the ship, correspondent in all respects to that possessed by the original creditors in the inception and completion of the various portions of the indebtment to them severally. The libellants connect themselves in no way as assignees of the primary creditors. The titles and interest of the original creditors in the debts were fully paid off and satisfied by the master; or, at furthest, by the voluntary advance of money by Murrell to the master, neither of whom took or claimed a transfer of any lien acquired by those creditors originally. No rule of the maritime law or any authority sanctioning the doctrine set up is produced, further than a supposed local practice, limited, so far as appears, to Mobile alone, which is spoken of by several witnesses as prevailing at that port, and I cannot regard that sufficient evidence to justify my adopting the practice as one resting on principle or called for by expediency. I think, therefore, that this point has not been sustained by that degree and order of evidence required to fix and legalize a custom which contravenes or extends beyond established principles of general law. (schooner *Reeside*, 2 Sumn. R., 567; Donnell *vs.* Columb. Ins. Co., 2 Sumn., 377); and, indeed, the permission to invoke the evidence of usage is rather applicable to the interpretation of the language of contracts, than to estab-

lish doctrines and rules of decision. (3 Kent, 6th Ed., 260, note d.)

I do not discuss the objections to the action taken by the claimant, on account of its staleness, or his position as a *bona fide* purchaser of the ship, a long period after the right of action set up by the libellants had accrued, if one existed at all, and I put the decision upon the ground that the libellants do not make out, under the law maritime, a right to subject the ship in kind to the satisfaction of their demand.

Libel dismissed, with costs.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT NEW YORK.

PUIG, MIR & Co., *vs.* SHIP JAMES GUTHRIE.	Appeal in Admiralty.

Opinion.

NELSON, C. J.: We are of the opinion the proofs show that the libellants acquired no lien upon the vessel on account of an advance of money for her disbursements at the port of Mobile, for supplies, repairs, &c. Their whole scope then leads to the conclusion that all parties, Murrell, the charterer and consignee of the vessel, at Mobile, and the libellants who were interested with him in the adventure to Ferrol, Spain, looked to the bill of exchange drawn by the master on his consignees in Spain against the freight. The disbursements on the previous voyage to Toulon, France, under the same charter, were raised by bill on the consignees of vessel against the freight; and the same means were adopted in the present shipment. The disaster attending the second voyage has led to this

attempt to charge the vessel. The transaction, stripped of the coloring thrown around, from the changed condition of the interests of the parties, as a consequence of the disaster at the Tortugas, is, that Murrell, the charterer and consignee, advanced the money temporarily to the master, until he could negotiate the bill of exchange against the freight in New Orleans through the house of the libellants, which was done. What confirms this view, is, that these parties seem to have understood the law to be that a bill of exchange drawn by the master for disbursements of his ship constitutes a lien against it in the hands of anyone making advances upon the bill. In this view an advance upon the credit of the ship was not material. We do not agree that there is any such custom at Mobile or elsewhere, which can set aside the established principles of law.

We have not looked into the question as to the extent of the title of the ship in Phillips, the claimant, as we are satisfied that no lien attached to it at all for the disbursements.

Decree affirmed.

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